

BILL ANALYSIS

Senate Research Center

S.B. 1296
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Business & Commerce
3/21/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 1102 (Real Estate Inspectors) of the Occupations Code pertains to the licensing and regulation of real estate inspectors by the Texas Real Estate Commission (TREC). Currently, certain agency practices related to inspectors do not match those used by TREC for other licensees under its jurisdiction. For example, other licensees are given a full year to complete their requirements for licensure while an application is open, but inspectors must complete their requirements for licensure within six months. Other TREC licensees are allowed to renew their expired license within six months of expiration by paying a late fee. Inspectors are not granted a late renewal period and must file an entirely new license application if they do not renew in a timely manner. Also, inspector applicants who fail the qualifying examination three times must wait six months before retaking the examination. No other license holders are subject to this punitive measure. Furthermore, whereas other licensees under TREC's jurisdiction are required to submit to fingerprinting and criminal history background review prior to licensure, real estate inspectors are not. The current statute also allows inspector applicants seeking licensure under the "fast track" method to meet their field experience requirements in a classroom setting. This often results in an inspector's first actual hands-on experience occurring at the same time as that inspector's initial inspection assignment. Addressing all of these matters will benefit the inspectors, reduce costs, and streamline agency operations.

In 2007, S.B. 914 mandated Errors and Omissions (E&O) coverage for real estate inspectors. While the bill capped the per occurrence amount at \$100,000, it was silent as to any aggregate limit. This has caused some confusion in the marketplace. Inspectors are unable to properly shop for insurance on a clear comparative basis and TREC does not have a statutory standard by which to properly judge compliance with the mandated insurance requirement. Additionally, an attorney general opinion has indicated that TREC effectively lacks authority to issue or renew licenses in the event that E&O coverage becomes unavailable in the Texas market, raising additional concerns from the inspector industry. Finally, it is redundant to mandate E&O coverage for inspectors and to maintain the current Inspector Recovery Fund, which is virtually unused since the advent of mandatory E&O insurance to benefit consumers.

S.B. 1296 amends current law to conform agency practices related to real estate inspectors to match those used by TREC for its other licensees. In addition, the bill clarifies pre-license education requirements to authorize some hands-on training prior to a licensee commencing field inspections of homes for Texas consumers. The bill also contains language that will enable TREC to better communicate with inspectors. Finally, the bill clarifies the current mandated financial responsibility requirements by adding a bond option which provides an alternative to E&O coverage and under which TREC could continue to issue and renew licenses and inspectors could continue to work, should the market cease to provide E&O coverage. S.B. 1296 also provides a mechanism for winding down the Inspector Recovery Fund, including a provision to refund to active inspectors up to \$100 of the fees each previously paid into the recovery fund.

As proposed, S.B. 1296 amends current law relating to the regulation of real estate inspectors.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Real Estate Commission is modified in SECTION 4 (Section 1102.111, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Real Estate Commission is rescinded in SECTION 15 (Section 1102.351, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 1102, Occupations Code, by adding Section 1102.1051, as follows:

Sec. 1102.1051. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) Requires the Texas Real Estate Commission (TREC) to require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by TREC, to TREC or to the Texas Department of Public Safety of the State of Texas (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation.

(b) Requires TREC to refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Requires TREC to conduct a criminal history check of each applicant for a license or renewal of a license using information:

(1) provided by the individual under this section; and

(2) made available to TREC by DPS, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(d) Authorizes TREC to:

(1) enter into an agreement with DPS to administer a criminal history check required under this section; and

(2) authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history check.

SECTION 2. Amends Section 1102.109, Occupations Code, as follows:

Sec. 1102.109. ELIGIBILITY FOR PROFESSIONAL INSPECTOR LICENSE. Requires an applicant, to be eligible for a professional inspector license, to:

(1) Makes no changes to this subdivision;

(2) submit evidence satisfactory to TREC of successful completion of at least 40 classroom hours of core real estate inspection courses, in addition to the hours required by Section 1102.108 (Eligibility for Real Estate Inspector License), rather than at least 30 classroom hours of core real estate inspection courses, in addition to the hours required by Section 1102.108, and at least eight classroom hours related to the study of standards of practice, legal issues, or ethics related to the practice of real estate inspecting; and

(3)-(4) Makes no changes to these subdivisions.

SECTION 3. Amends Section 1102.110, Occupations Code, as follows:

Sec. 1102.110. ELIGIBILITY OF PREVIOUS LICENSE HOLDERS. (a) Provides that, notwithstanding Section 1102.108, an applicant is eligible for and has satisfied all requirements for a real estate inspector license if the applicant:

(1) Makes no changes to this subdivision;

(2) Makes a nonsubstantive change;

(3) provides evidence that the applicant has completed any continuing education that would have been required for timely renewal of the previous license; and

(4) Redesignates existing Subdivision (3) as Subdivision (4) and makes no further changes.

(b) Provides that, notwithstanding Section 1102.109, an applicant is eligible for and has satisfied all requirements for a professional inspector license if the applicant:

(1) Makes a nonsubstantive change;

(2) provides evidence that the applicant has completed any continuing education that would have been required for timely renewal of the previous license; and

(3) Redesignates existing Subdivision (2) as Subdivision (3) and makes no further changes.

SECTION 4. Amends Section 1102.111(b), Occupations Code, to prohibit rules adopted under Subsection (a) (relating to the provision of TREC by rule for the substitution of relevant experience and additional education for certain requirements) from requiring an applicant to complete more than 320 additional hours, rather than 320 additional classroom hours, of core real estate inspection courses, or have more than seven years of relevant experience.

SECTION 5. Amends Section 1102.114, Occupations Code, as follows:

Sec. 1102.114. ISSUANCE OF LICENSE. Requires TREC to issue the appropriate license to an applicant who:

(1) meets the required qualifications; and

(2) has submitted proof of financial responsibility with TREC by:

(A) providing a certificate of insurance verifying coverage as required by Section 1102.1141; or

(B) filing a bond, or other security accepted by TREC, that meets the requirements of Section 1102.1142.

Deletes existing text requiring TREC to issue the appropriate license to an applicant who pays the fee required by Section 1102.352(a) (relating to a fee required to be paid by a person who passes a license examination and the requirement that the TREC deposit the fee to the credit of the Real Estate Inspection Recovery Fund), and offers proof that the applicant carries liability insurance with a minimum limit of \$100,000 per occurrence to protect the public against a violation of Subchapter G (Prohibited Acts).

SECTION 6. Amend Subchapter C, Chapter 1102, Occupations Code, by adding Section 1102.1141, as follows:

Sec. 1102.1141. INSURANCE COVERAGE. Requires that insurance obtained by an applicant or inspector to meet the financial responsibility requirement of Section 1102.114:

(1) be written by an insurer authorized to engage in the business of insurance in this state, a risk retention group as defined by Chapter 2201 (Risk Retention

Groups and Purchasing Groups), Insurance Code, or an eligible surplus lines insurer, as defined by Section 981.002 (Definitions), Insurance Code;

(2) specifically provide for professional liability insurance to protect the public against a violation of Subchapter G; and

(3) provide coverage with a minimum limit of \$100,000 per occurrence, and a total annual aggregate of not less than \$100,000.

SECTION 7. Amends Subchapter C, Chapter 1102, Occupations Code, by adding Section 1102.1142, as follows:

Sec. 1102.1142. BOND OR OTHER SECURITY. (a) Requires that a bond, or other security accepted by TREC, submitted by an applicant or inspector to meet the financial responsibility requirement Section 1102.114 be issued by a carrier admitted in this state in an amount not less than \$100,000, and continuous.

(b) Prohibits a surety from cancelling a bond or other security issued under Subsection (a) unless the surety provides at least 90 days written notice of cancellation to TREC.

(c) Requires that any security provided under this section in a form other than a bond be convertible to cash by TREC for the benefit of persons who contract with an inspector in this state, without resort to the courts, if TREC determines that the inspector has violated Subchapter G. Requires that any amount remaining after the inspector's license has expired be returned to the inspector not later than the sixth month after the date the license expires.

(d) Requires an applicant or inspector who files a bond or other security under this section to designate a third party not affiliated with the applicant or inspector to handle the processing of claims regarding that bond or other security.

SECTION 8. Amends Section 1102.118, Occupations Code, as follows:

Sec. 1102.118. New heading: CONTACT INFORMATION. (a) Requires an applicant or inspector to provide TREC a current mailing address and telephone number, and an e-mail address if available.

(b) Creates this subsection from text of existing Subsection (a). Requires an inspector, not later than the 30th day after the date the inspector changes the inspector's address, e-mail address, or telephone number, rather than place of business, to notify TREC and pay any required fee, rather than the required fee.

SECTION 9. Amends Section 1102.153, Occupations Code, to require a license applicant who does not satisfy the examination requirement within 12 months, rather than six months, after the date the application is filed to submit a new application and pay another examination fee to be eligible for examination.

SECTION 10. Amends Section 1102.155(b), Occupations Code, as follows:

(b) Prohibits 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 TREC that the applicant has taken additional education, as prescribed by TREC, after the date the applicant last took the examination, rather than prohibiting an applicant who fails the examination three consecutive times in connection with the same application from applying for reexamination or submitting a new license application before six months after the date of the third failed examination.

SECTION 11. Amends Section 1102.202, Occupations Code, to require TREC, not later than the 31st day before the expiration date of a person's license, to notify the person of the license

expiration, rather than send to the person at the person's last known address according to TREC's records written notice of the license expiration.

SECTION 12. Amends Section 1102.203, Occupations Code, as follows:

Sec. 1102.203. RENEWAL OF LICENSE. (a) Authorizes a person to renew an unexpired license by paying the required renewal fee to TREC before the expiration date of the license and providing proof of financial responsibility, rather than professional liability insurance, as required by Section 1102.114.

(b) 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 a person, if a license has been expired for more than 90 days but less than six months, to renew the license by paying to TREC a fee equal to two times the required renewal fee.

(c) Redesignates existing Subsection (b) text as Subsection (c). Prohibits a person, if the person's license has been expired for six months or longer, rather than if the person's license expires, from renewing the license. Authorizes the person to obtain a new license by submitting to reexamination, if required, and complying with the requirements and procedures for obtaining an original license.

(d) Requires each applicant for the renewal of a license to disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(e) Requires that the disclosure under Subsection (d) be provided even if an order has granted community supervision suspending the imposition of the sentence.

SECTION 13. Amends Section 1102.402(c), Occupations Code, to provide that a person for whom a payment has been made from the Real Estate Inspection Recovery Fund or Real Estate Recovery Trust Account is not eligible for a license until the person has repaid in full the amount paid from the fund or the trust account on the person's account, plus interest at the legal rate.

SECTION 14. Amends Section 1102.403(b), Occupations Code, as follows:

(b) Requires that an administrative penalty collected under this section be deposited to the credit of the general revenue fund and is required to offset any amounts due from TREC to the general revenue fund, rather than requiring that an administrative penalty collected under this section for a violation by an inspector be deposited to the credit of the real estate inspection recovery fund. Deletes existing text requiring a penalty collected under this section for a violation by a person who is not licensed under this chapter or Chapter 1101 (Real Estate Brokers and Salespersons) be deposited to the credit of the real estate recovery trust account or the real estate inspection recovery fund, as determined by TREC.

SECTION 15. Repealer: Section 1102.252 (Payment), Occupations Code.

Repealer: Section 1102.253 (Review of Fee Amounts), Occupations Code.

Repealer: Subchapter H (Real Estate Inspection Recovery Fund), Chapter 1102, Occupations Code.

SECTION 16. (a) Defines, in this section, "commission," and "eligible inspector."

(b) Requires TREC, not later than August 31, 2015, to transfer not less than \$300,000 from the real estate inspection recovery fund to the general revenue fund.

(c) Requires TREC, not later than August 31, 2017, to determine the remaining liability of the real estate inspection recovery fund based on any pending claim for payment under former Subchapter H, Chapter 1102, Occupations Code.

(d) Requires TREC to refund to each eligible inspector who also holds a license as of the date of the refund any amount in excess of the remaining liability of the real estate inspection recovery fund at a rate not to exceed \$100.

(e) Requires TREC, once all refunds to the inspectors are paid and all claims for payment from the real estate inspection recovery fund are paid, to transfer any remaining money to the general revenue fund.

(f) Provides that any money transferred to the general revenue fund under this section offset any amounts due from TREC to the general revenue fund.

SECTION 17. (a) Provides that the changes in law made by this Act apply only to an application for a license submitted to TREC on or after September 1, 2013. 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.

(b) Provides that the changes in law made by this Act apply only to a claim for payment from the real estate inspection recovery fund based on a cause of action that accrues on or after the effective date of this Act. Provides that a claim for payment based on a cause of action that accrues before the effective date of this Act is governed by the law in effect when the cause of action accrued, and the former law is continued in effect for that purpose.

(c) Requires that a claim for payment from the real estate inspection recovery fund under former Section 1102.355 (Claim for Payment From Fund), Occupations Code, for a cause of action that accrues before September 1, 2013, be filed before September 1, 2017.

SECTION 18. Effective date: September 1, 2013.