

## **BILL ANALYSIS**

S.B. 699  
By: Eltife  
Licensing & Administrative Procedures  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties contend that The Real Estate License Act needs to be revised and updated to address and clarify issues pertaining to terminology, licensing, education, the real estate recovery trust account, Texas Real Estate Commission (TREC) contracts and forms, TREC members and employees, and TREC complaint, investigation, and enforcement procedures. S.B. 699 seeks to make these revisions.

### **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 rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTIONS 9, 25, 26, 52, 57, and 66 of this bill.

### **ANALYSIS**

S.B. 699 amends the Occupations Code to update and clarify provisions of The Real Estate License Act. The bill replaces references to a salesperson with references to a sales agent, including in the definition of the term, which is redefined to mean a person who is sponsored by a licensed broker for the purpose of performing specified real estate activities rather than a person who is associated with a licensed broker for such purpose. The bill adds to the acts a real estate broker performs for another person in exchange for a commission or other valuable consideration, or with the expectation of receiving a commission or other valuable consideration, advising or offering advice to an owner of real estate concerning the negotiation or completion of a short sale.

S.B. 699 replaces references to core real estate courses with references to qualifying real estate courses and changes the nature of the minimum required hours of instruction on laws relating to housing discrimination, housing credit discrimination, and community reinvestment included in certain qualifying real estate courses from classroom instruction to class hours of instruction. The bill prohibits a daily course segment for a qualifying course from exceeding 12 hours and prohibits an applicant for a license issued under The Real Estate License Act, a holder of such a license, or an education provider from reporting to the Texas Real Estate Commission (TREC) the completion of an alternative delivery or correspondence course offered as a qualifying course until the elapsed time between the time the applicant or license holder registers for the course and the time the completion of the course is reported exceeds twice the number of hours for which credit is claimed.

S.B. 699 changes the nature of the activities a person engages in if the person performs or offers, attempts, or agrees to perform for another person specified real estate activities as part or all of a

transaction from acting as a broker or salesperson under The Real Estate License Act to engaging in real estate brokerage and prescribes activities for which a person is not considered, based solely on such activities, to be engaged in real estate brokerage, regardless of whether the person is licensed under the act. The bill limits the exemption from The Real Estate License Act for an attorney-in-fact authorized under a power of attorney to conduct a real estate transaction to not more than three such real estate transactions annually.

S.B. 699 establishes that the presiding officer, assistant presiding officer, and secretary constitute the executive committee of the TREC and replaces references to the TREC administrator and assistant administrator with references to the executive director and deputy executive director, respectively. The bill authorizes the TREC by rule to determine what constitutes a day or actual and necessary expense for purposes of TREC members' entitlement to a per diem and reimbursement and entitles a member to quasi-judicial immunity from suit for an action that is taken as a member of the TREC and is in compliance with the law. The bill authorizes a TREC member or employee to make a presentation to a group of license holders for which the license holders may receive continuing education credit. The bill prohibits the member or employee from receiving compensation for the presentation but authorizes a member or employee to receive reimbursement for reasonable travel expenses. The bill changes from an annual period to a two-year period the period for which the equal employment opportunity policy statement prepared and maintained by the executive director or the executive director's designee must cover and changes the frequency with which the policy statement must be updated from at least annually to with each strategic plan of operation the TREC files. The bill removes the requirement that the policy statement be filed with the governor.

S.B. 699 specifies that the registration fee charged by the TREC is a fee for registration as an easement or right-of-way agent and removes the specification that the fee is an annual fee. The bill repeals a statutory provision prohibiting the TREC from charging certain fees if the TREC issues an original inactive salesperson license to a salesperson who is not sponsored by a licensed broker and subsequently becomes sponsored by a licensed broker.

S.B. 699 increases the additional fee for the issuance or renewal of a broker license collected for the Texas Real Estate Research Center from \$20 to \$70. The bill changes from quarterly to not less than quarterly the frequency with which the TREC is required to transmit the additional fees to Texas A&M University for purposes of the research center. The bill makes these provisions effective September 1, 2015, but only if S.B. 765 or similar legislation of the 84th Legislature, Regular Session, 2015, repealing an Occupations Code provision relating to fee increases, is enacted and becomes law.

S.B. 699 specifies that a rule restricting a TREC-regulated person's advertisement under a trade name that the TREC is prohibited from including in rules to prohibit false, misleading, or deceptive practices is a rule that restricts the person's advertisement under a trade name authorized by state law and registered with the TREC. The bill adds any activity under the Texas Appraisal Management Company Registration and Regulation Act, the Residential Service Company Act, or the Texas Timeshare Act to the activities for which the TREC may solicit and accept a gift, grant, donation, or other item of value from any source to pay for the activity. The bill revises procedures for providing notice to consumers and service recipients of TREC contact information for directing a complaint to the TREC and makes statutory procedures regarding a complaint investigation and disposition of a license holder apply to an investigation of a holder of a certificate issued under The Real Estate License Act. The bill provides for the confidentiality of investigation material prepared or compiled by the TREC in connection with a complaint, investigation, or audit of any person subject to TREC jurisdiction, provides for limited disclosure of such information or material, and specifies that, on the dismissal or final resolution of a complaint, investigation, or audit, information or materials prepared or compiled by the TREC in connection with the complaint, investigation, or audit are subject to disclosure under Government Code provisions relating to the state auditor and state public information law.

S.B. 699 replaces references to accreditation of programs or courses with references to approval to offer a program or course of study in statutory provisions relating to the accreditation of educational programs and courses of study in real estate and real estate inspection, updates TREC duties with respect to those courses, and authorizes the TREC to renew a program's approval to offer a program or course of study on a probationary basis if the TREC determines that the program is capable of meeting the examination passage rate benchmark within a reasonable time established by the TREC. The bill requires the TREC to adopt rules for determining the educational program a graduate is affiliated with for purposes of examination passage rate data. The bill removes statutory language providing for the composition of the committee the TREC may appoint to review the performance of an educational program performing below TREC standards.

S.B. 699 clarifies that the requirement for the TREC to refuse to issue a license to or renew a license of a person who does not submit a complete and legible set of fingerprints to the TREC applies to the issuance or renewal of a license on active status. The bill removes from the eligibility requirements for a license under The Real Estate License Act the completion of three classroom hours of course work on laws governing housing discrimination, housing credit discrimination, and community reinvestment or three semester hours of course work on constitutional law.

S.B. 699 sets out information the TREC may consider in determining whether a designated broker of a business entity is in good standing for purposes of a business entity's eligibility for a license under The Real Estate License Act and revises the experience and education requirements and the alternate experience requirements for certain applicants for a broker license, the eligibility requirements for certain nonresident applicants for a license under the act, the conditions under which the TREC is authorized and required to waive license and examination requirements for certain previously licensed applicants for a broker or sales agent license, and the circumstances under which the TREC may place a broker or sales agent license on inactive status and return a sales agent license to active status.

S.B. 699 shortens the deadlines by which the TREC or a national testing service must notify examinees of the results of an examination for a broker or sales agent license, requires a request made by an examinee who fails the examination for an analysis of the examinee's performance on the examination to be accompanied by a statement identifying the person, and makes the results of the examination confidential. The bill 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 the TREC that the applicant has completed additional education, as prescribed by the TREC, since the date of the applicant's last examination. The bill requires the TREC to publish guidelines and examination study guides, make the guidelines and study guides available to applicants, and update the guidelines and study guides as necessary. The bill specifies that the contents of study guides and other material developed by the TREC or with TREC authorization are within the public domain and free of copyright restrictions, except for the examination and other testing products that require secure and discreet protection. The bill prohibits a person other than the TREC from profiting from the reproduction and distribution of such material and authorizes such a person to sell the material only at a price that equals the cost of reproducing and distributing the material.

S.B. 699 changes the term for which the TREC may issue or renew a license from a period not to exceed 24 months to a period of 24 months. The bill removes the requirement that a person whose license has been expired for six months or longer submit to reexamination, in addition to complying with certain requirements and procedures, to obtain a new license. The bill revises continuing education requirements for licensees by removing the specification that a license holder who is not subject to the education requirement for a sales agent license renewal complete at least 15 classroom hours and instead requiring the TREC to prescribe by rule the number of classroom hours of continuing education courses the license holder is required to attend with a minimum of 15 classroom hours and prohibiting the TREC from increasing the number of

required classroom hours by more than three over the term of a license; by including the addition of alternative delivery courses as a substitute for the required classroom attendance; by increasing the continuing education hours required to provide current information on specified legal topics; and by including ethical requirements of engaging in real estate brokerage among those legal topics. The bill removes the prohibition against completing an online course in less than 24 hours. The bill updates other statutory provisions relating to additional education requirements for certain license holders and a license holder's contact information provided to the TREC.

S.B. 699 repeals a statutory provision prescribing the specific language of the notice required to be provided by a license holder to a party to a real estate transaction at the time of the first substantive dialogue and instead requires a license holder, at the time of the license holder's first substantive communication with a party relating to a proposed transaction regarding specific real property, to provide to the party written notice that provides the name, license number, and contact information for the license holder and the license holder's supervisor and broker, if applicable, and describes the ways a broker can represent a party and the broker's basic duties and obligations to a party the broker represents. The bill requires the TREC, not later than February 1, 2016, to adopt rules prescribing the text of that notice and establishing the methods by which a license holder must provide the notice. The bill includes among the circumstances under which a license holder is not required to provide the notice the occurrence of the communication at a property that is held open for any prospective buyer or tenant when the communication concerns that property and conditions the exemption from providing notice when meeting with a party who is currently represented on the license holder knowing that the party is currently represented.

S.B. 699 establishes that, for purposes of the real estate recovery trust account, a claim against a business entity license holder is also a claim against the broker who is the business entity's designated broker. The bill clarifies the circumstances under which an aggrieved person is entitled to reimbursement from the trust account; prescribes requirements for an aggrieved person, a license or certificate holder, and the TREC when such a person brings an action for a judgment that may result in an agreed judgment or order for payment from the trust account; revises statutory provisions relating to payments to the trust account by license and certificate holders; and sets out provisions relating to the TREC and an aggrieved person reaching a settlement with respect to a claim for payment from the trust account before setting a court hearing. The bill revises statutory provisions relating to issues at a hearing on a claim and the TREC response to a notice of a claim by agreeing to pay all or part of the claim without a hearing. The bill establishes that a business entity and entity's designated broker are considered a single license holder for purposes of limits on payments from the trust account for claims against a single license holder. The bill removes the requirement that each license and certificate holder provide notice to consumers and service recipients of the availability of payment from the trust account for aggrieved persons and instead requires the TREC by rule to prescribe a notice regarding the availability of such payment and to establish methods by which each license and certificate holder must provide the notice to consumers and service recipients.

S.B. 699 expands the authority of the TREC to suspend or revoke a license and take other disciplinary action under The Real Estate License Act to also include a license issued under statutory provisions regulating real estate inspectors for certain conduct committed by a license holder. The bill replaces the authority of the TREC to revoke a license, approval, or registration issued under The Real Estate License Act or under statutory provisions regulating real estate inspectors based on a payment from the trust account on the license holder's behalf with the requirement that the TREC revoke such a license, approval, or registration based on such a payment and adds as a circumstance under which that revocation is required the license or registration holder's failure to repay the trust account the full amount of a payment made on the license or registration holder's behalf before a specified deadline. The bill provides for TREC license revocation of both a business entity and the entity's designated broker in the case of a payment on behalf of such an entity or broker. The bill prohibits a person whose license or

registration has been revoked, a person who has surrendered a license or registration issued by the TREC, or a person whose application for a license or registration has been denied after a hearing from applying to the TREC for a license or registration before the second anniversary of the date of the revocation, surrender, or denial. The bill prescribes procedures relating to a hearing and order for the failure to appear in person at a contested case hearing, including the awarding of reasonable costs to the TREC and authorizes the TREC by any lawful means to pursue collection of an administrative penalty that the attorney general notifies the TREC that the attorney general will not pursue collecting.

S.B. 699 repeals the following provisions of the Occupations Code:

- Section 1101.106(c)
- Section 1101.152(c)
- Sections 1101.455(d) and (g)
- Sections 1101.558(a), (d), and (e)
- Section 1101.603(b)
- Section 1101.615(b)

**EFFECTIVE DATE**

Except as otherwise provided, January 1, 2016.