

- SUBJECT:** Revising the Real Estate License Act
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 9 ayes — Wilson, Yarbrough, Flores, Goolsby, Haggerty, D. Jones, J. Moreno, A. Reyna, Wise
0 nays
- WITNESSES:** For — Dennis Patillo, Bill Stinson, Texas Association of Realtors
Against — None
On — Carlos Celestino and William Kuntz, Jr., Texas Department of Licensing and Regulation; Wayne Thorburn, Texas Real Estate Commission
- BACKGROUND:** The Real Estate License Act (Art. 6573a, VTCS) governs the licensing and practice of real estate brokers, salespeople, and inspectors in Texas. The act creates two funds to pay claims by consumers who suffer losses due to the wrongful acts of real estate professionals: the real estate recovery fund and the real estate inspection recovery fund. The Texas Real Estate Commission (TREC) is responsible for licensing and overseeing the real estate industry.
- DIGEST:** CSHB 695 would establish that a person acting as a real estate broker or salesperson without a license would commit a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000. Each day a violation of the Real Estate License Act continued or occurred would be considered a separate offense for the purpose of imposing a penalty, if the TREC found that the person had engaged in activities that require a license without having a license and had not been licensed at any time in the previous four years.

The bill would delete the requirement that the aggrieved person in a claim show that he or she had obtained a judgment that was not subject to a stay or discharge in bankruptcy.

An applicant for an active salesperson license no longer would have to have a broker join the application. If the person satisfied all requirements for a salesperson license, the commission could issue that person an inactive salesperson license. However, the person could not act as a salesperson without a broker's sponsorship. Anyone, rather than only a previously licensed salesperson, could apply for an inactive salesperson license.

CSHB 695 would authorize the TREC to decide the content of the core real estate courses required for licensing. The bill would specify that, of the 60 semester hours or equivalent classroom hours of postsecondary education required for a broker license, at least 18 hours would have to be completed in core real estate courses. It would raise the number of semester hours that an applicant for a salesperson license or license renewal would have to complete in core real estate courses. It also would raise the number of continuing education hours required for renewal of an inspector license. The TREC could prescribe the title, content, and duration of continuing education courses that a licensee would have to attend to renew a license.

The bill would require each broker and salesperson renewing his or her license to pay an additional fee to the real estate recovery fund if the TREC determined at any time — rather than on December 31 of any year, as in current law — that the fund balance was less than \$1 million.

CSHB 695 would specify that the TREC could take any disciplinary action authorized by the Real Estate License Act in response to a negative outcome of a complaint against a licensed broker or salesperson. The TREC could authorize a commission employee to file a complaint and investigate a licensee if the licensee failed to complete the required continuing education within the prescribed period or if the licensee failed to provide information requested by the TREC for a license renewal in a timely manner.

The bill would make violations of the Real Estate License Act subject to the Government Code rather than to the Administrative Procedure and Texas Register Act. A penalty collected for a violation would have to be deposited in either the real estate recovery fund or the real estate inspection recovery fund, as decided by the commission.

CSHB 695 would add a section to the Residential Service Company Act (Art. 6573b, VTCS) authorizing the TREC to assess an administrative penalty in the same manner as under the Real Estate License Act.

The bill would prohibit a person whose license had expired from renewing the license, although the person could obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining a new license.

The bill would add Internet advertising to the act's protections against deceptive or misleading advertising.

CSHB 695 would raise the maximum fee for an application for a license examination from \$50 to \$100 and would raise the maximum fee for a transcript evaluation from \$15 to \$20. It would require the TREC to charge and collect a fee of up to \$20 for filing a request for issuance of a license because of a name change, return to active status, or change in sponsoring professional inspector. It also would increase the maximum aggregate payments for claims against a licensed inspector.

This bill would take effect September 1, 2001, except for the provisions relating to the required number of classroom hours for a broker, salesperson, or inspector license, which would take effect January 1, 2002.

**SUPPORTERS
SAY:**

CSHB 695 would make various cleanup changes to the Real Estate License Act beneficial to both consumers and licensees. Under current law, if a consumer files a complaint against a licensed real estate broker or salesperson, the complaint is upheld, and the licensee files for bankruptcy, the consumer cannot be compensated. By deleting the provision regarding bankruptcy from the statute, CSHB 695 would allow the consumer to be compensated from the real estate recovery fund in the event that the licensee could not pay damages.

CSHB 695 would authorize the TREC to penalize people who were not licensed by the commission. Currently, the TREC can penalize licensees who violate regulations but cannot penalize unlicensed people who engage in activities that require a license. Under this bill, the TREC could fine unlicensed people up to \$1,000 a day for every day a violation occurred.

CSHB 695 would clean up rules and regulations to fit today's real estate industry. It would address many issues that arose out of strategic planning sessions held with licensees and members of the public to discuss the industry's changing needs and how to improve consumer protections.

The bill's fiscal note estimates that it would result in a net gain to the state of \$446,000 in general revenue during fiscal 2002-03 due to the proposed fee increases for examination applications and transcript evaluations and the proposed new fee for name changes, transfers from inactive to active status, or changes in sponsoring professional inspector.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute made various changes to the filed version, including:

- ! deleting a provision that would have authorized the TREC to limit the number of times an applicant could take the licensing examination, and
- ! adding a provision that would authorize the TREC to decide the title, content, and duration of required continuing education.

The filed version dealt only with the educational requirements for a real estate broker or salesperson license. The substitute incorporated provisions from a related bill, HB 659 by Pickett and A. Reyna.

A similar bill in the 76th Legislature, SB 1016 by Wentworth, passed the Senate and was reported favorably as substituted by the House Licensing and Administrative Procedures Committee but died on the House's General State Calendar late in the session.