

BILL ANALYSIS

Senate Research Center
76R14971 SMH-F

C.S.H.B. 1521
By: Siebert (Harris)
Jurisprudence
5/11/1999
Committee Report (Substituted)

DIGEST

Currently, the penalty provisions regarding professional licensing statutes which regulate the behavior of real property professionals, such as land surveyors, appraisers, realtors, and time share professionals, have been enacted, but not updated. C.S.H.B. 1521 would update the penalty provisions of various licensing sections regarding the behavior of real property professionals.

PURPOSE

As proposed, C.S.H.B. 1521 sets forth provisions regarding penalties for violating certain real property statutes.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23A(b), Article 5282c, V.T.C.S. (Professional Land Surveying Practices Act), to provide that the penalty for each violation may be in an amount not to exceed \$1,500, rather than \$1,000, for each violation.

SECTION 2. Amends Section 23B, Article 5282c, V.T.C.S., to require the attorney general, on request of the Texas Board of Professional Land Surveying (board), to institute and conduct a suit to collect the penalty in the name of the state. Makes conforming changes.

SECTION 3. Amends Article 6573a.1, V.T.C.S., to provide that a person commits an offense if the person wilfully violates or fails to comply with any of the provisions of the Real Estate License Act or any order of the Texas Real Estate Commission (commission). Provides that an offense under this article is a Class A misdemeanor. Deletes text regarding conviction fines. Makes conforming changes.

SECTION 4. Amends Section 12(j), Article 6573a.2, V.T.C.S. (Texas Appraiser Licensing and Certification Act), to prohibit a civil penalty under this subsection from being less than \$1,000, rather than \$500, or more than \$10,000.

SECTION 5. Amends Section 12A(j), Article 6573a.2, V.T.C.S., to require the board to make findings of facts and conclusions of law and to impose an administrative penalty to be set at the discretion of the board at an amount that may not exceed \$1,500, rather than \$1,000, for each violation.

SECTION 6. Amends Section 22, Article 6573b, V.T.C.S. (Residential Service Company Act), to authorize the commission to bring an action in the name of the state in a district court of Travis County, Texas, to restrain or otherwise enjoin the violation and for such other relief as the court may deem appropriate, when it appears to the commission that a service company is violating or has violated this Act or a rule issued under, rather than pursuant to, this Act and that bringing an action would be in the public interest. Provides that the commission has exclusive authority to bring an action under this section. Requires the court to grant, without bond, the injunctive relief warranted by the facts, on application and a finding that a service company is violating or has violated this Act or a rule issued under this Act. Makes conforming changes.

SECTION 7. Amends Article 6573b, V.T.C.S., by amending Section 23 and adding Section 23A, as follows:

Sec. 23. CIVIL PENALTY. Authorizes the commission to bring an action for a civil penalty for

a violation of this Act. Prohibits the penalty from exceeding \$2,500 for each violation or \$50,000 in the aggregate for all violations of a similar nature. Provides that violations are of a similar nature if the violations consist of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this Act occurred. Deletes text regarding deceptive trade and \$1,000 civil penalty. Makes a nonsubstantive change.

Sec. 23A. ACTION UNDER DECEPTIVE TRADE PRACTICES ACT. Provides that a violation of this Act is actionable by a consumer as a deceptive trade practice under Chapter 17E, Business and Commerce Code. Deletes text requiring a plaintiff who shows a violation of this Act to recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Deletes text regarding Subchapter E. Makes conforming changes.

SECTION 8. Amends Section 12.002(e), Property Code, to make a conforming change.

SECTION 9. Amends Section 221.073(c), Property Code, to prohibit a person from being prosecuted for more than one offense involving the same promotion, even if mailed or distributed to more than one person. Makes a conforming and nonsubstantive change.

SECTION 10. Amends Sections 221.075(b) and (c), Property Code, to provide that in no event shall the civil penalties exceed \$30,000, rather than \$25,000, for any one statement period. Makes a conforming change.

SECTION 11. Makes application of this Act retroactive for Sections 1, 2, 4, 5, 7, and 10.
Makes application of this Act prospective for Sections 3, 6, 8, and 9.

SECTION 12. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 6.

Amends Section 22, Article 6573b, V.T.C.S., to authorize the commission to bring an action in the name of the state in a district court of Travis County, Texas, to restrain or otherwise enjoin the violation and for such other relief as the court may deem appropriate, when it appears to the commission that a service company is violating or has violated this Act or a rule issued under, rather than pursuant to, this Act and that bringing an action would be in the public interest. Provides that the commission has exclusive authority to bring an action under this section. Requires the court to grant, without bond, the injunctive relief warranted by the facts, on application and a finding that a service company is violating or has violated this Act or a rule issued under this Act. Makes conforming changes. Redesignates proposed SECTION 6 as SECTION 8.

SECTION 7.

Amends Section 23, Article 6573b, V.T.C.S., to authorize the commission to bring an action for a civil penalty for a violation of this Act. Prohibits the penalty from exceeding \$2,500 for each violation or \$50,000 in the aggregate for all violations of a similar nature. Provides that violations are of a similar nature if the violations consist of the same or similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this Act occurred, for purposes of this section. Deletes text regarding deceptive trade practice and \$1,000 civil penalty. Makes a conforming change.

Adds Section 23A, Article 6573b, V.T.C.S., regarding action under the Deceptive Trade Practices Act. Redesignates proposed SECTION 7 as SECTION 9.

SECTION 9.

Redesignates the proposed prospective clause in SECTION 9 as SECTION 11.

SECTION 11.

Adds a retroactive clause for Sections 1, 2, 4, 5, 7, and 10 of this Act. Adds a prospective clause for Sections 3, 6, 8, and 9 of this Act.

SECTION 12.

Adds the emergency clause. Redesignates proposed SECTION 10 as SECTION 12. Adds the effective date of upon passage.