

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Appraisal management companies (AMC) are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. The AMC recruits, qualifies, verifies licensure, and negotiates fees and service level expectations with a network of third-party appraisers. The AMC is also responsible for many tasks associated with the collateral valuation process, including appraisal review, quality control, market value dispute resolution, warranty administration, and record retention. To date, AMCs have not been subject to government oversight or regulation. Title XIV, Section 1473 of the federal Dodd-Frank Act imposes a requirement that AMCs be regulated.

S.B. 734 amends the Occupations Code relating to the registration and regulation of appraisal management companies. The bill would establish the Texas Appraiser Licensing and Certification Board (TALCB) to oversee appraisal management companies, which the bill defines as a party, authorized either by a creditor of a loan secured by a consumer's principal dwelling or by an underwriter or other principal in the secondary mortgage markets, that performs appraisal management services in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in securitization. TALCB would register and regulate appraisal management companies; levy and collect a registration or renewal application fee sufficient to cover administrative costs of not more than \$2,500; collect a national registry fee annually from each registered company; deposit the fees to a new General Revenue Account—Appraiser Registry; and send the fees to the appraisal subcommittee of the Federal Financial Institutions Council. The bill would require TALCB to issue a unique registration number to each appraisal management company and publish annually a list of the registered companies.

The bill would allow the agency to assess an administrative penalty not to exceed \$25,000 per violation.

As proposed, S.B. 734 amends current law relating to the registration and regulation of appraisal management companies and provides administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Appraiser Licensing and Certification Board in SECTION 1 (Sections 1104.051, 1104.052, 1104.103, and 1104.156, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 7, Occupations Code, by adding Chapter 1104, as follows:

CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1104.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Appraisal Management Company Registration and Regulation Act.

Sec. 1104.002. DEFINITIONS. Defines "appraisal," "appraisal foundation," "appraisal management company," "appraisal management service," "appraisal panel," "appraisal standards board," "appraisal subcommittee," "appraiser," "board," "controlling person," "federal financial institution regulatory agency," and "Uniform Standards of Professional Appraisal Practice" in this chapter.

Sec. 1104.003. EXEMPTIONS. (a) Provides that this chapter does not apply to:

(1) a person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

(2) a department or unit within a financial institution that:

(A) is subject to direct regulation by an agency of this state or the United States government; and

(B) receives a request for the performance of an appraisal from one employee of the financial institution and another employee of the same financial institution assigns the appraisal request to an appraiser who is an independent contractor to the institution;

(3) subject to Subsection (b), a person who enters into an agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal;

(4) an appraisal management company with an appraisal panel of not more than 15 appraisers; or

(5) an appraisal management company that is a subsidiary owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency.

(b) Prohibits an appraisal management company from requiring an employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of this chapter.

[Reserves Sections 1104.004-1104.050 for expansion.]

SUBCHAPTER B. BOARD POWERS AND DUTIES

Sec. 1104.051. RULES. Authorizes the Texas Appraiser Licensing and Certification Board (TALCB) to adopt rules necessary to administer this chapter.

Sec. 1104.052. FEES. (a) Requires TALCB by rule, subject to Subsection (b), to establish an application fee in an amount so that the sum of the fees paid by all appraisal management companies seeking registration under this chapter are sufficient for the administration of this chapter.

(b) Prohibits the application fee established under this section from exceeding \$2,500.

(c) Requires TALCB to collect annually from each appraisal management company registered under this chapter the amount determined by the appraisal subcommittee to be a national registry fee for each person on the appraisal panel of the company. Requires TALCB to deposit the registry fees to the credit of the appraiser registry account in the general revenue fund.

(d) Requires that the fees collected under Subsection (c) be sent to the appraisal subcommittee regularly as required by federal law.

[Reserves Sections 1104.053-1104.100 for expansion.]

SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 1104.101. REGISTRATION REQUIRED. Prohibits a person, unless the person is registered under this chapter, from:

- (1) acting as an appraisal management company;
- (2) providing appraisal management services; or
- (3) advertising or representing the person as an appraisal management company.

Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP. (a) Prohibits an appraisal management company applying for registration under this chapter from being directly or indirectly owned, wholly or partly, by:

- (1) a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; or
- (2) another entity more than 10 percent of which is owned by any person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

(b) Requires a person owning more than 10 percent of an appraisal management company in this state to:

- (1) be of good moral character, as determined by TALCB; and
- (2) submit to a background investigation, as determined by TALCB.

(c) Requires an appraisal management company applying for registration under this chapter to certify to TALCB that:

- (1) it has reviewed each entity that owns more than 10 percent of the company; and
- (2) no entity reviewed under Subdivision (1) is more than 10 percent owned by a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation.

Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL. (a) Requires an applicant for registration or registration renewal under this chapter to submit:

- (1) an application on a form prescribed and provided by TALCB; and
- (2) the fee established under Section 1104.052(a).

(b) Requires that the application contain:

- (1) the name, business address, and telephone contact information of the entity seeking registration;
- (2) the name and contact information for the company's agent for service of process in this state if the entity is not a corporation domiciled in this state;

(3) the name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns more than 10 percent of the appraisal management company;

(4) the name, address, and contact information for at least one controlling person;

(5) the designation of a primary contact under Section 1104.104;

(6) a certification that the entity has a system in place to ensure compliance with Sections 1104.152, 1104.156, and 1104.157;

(7) a written irrevocable consent to service of process; and

(8) any other information required by TALCB.

(c) Requires TALCB to adopt rules regarding the renewal of a registration under this chapter.

Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) Requires an appraisal management company applying for registration under this chapter to designate one controlling person as the primary contact for all communication between TALCB and the company.

(b) Provides that the controlling person designated under Subsection (a):

(1) may not have had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state;

(2) must be of good moral character, as determined by TALCB; and

(3) shall submit to a background investigation, as determined by TALCB.

Sec. 1104.105. DENIAL OF REGISTRATION. (a) Authorizes TALCB to deny a registration:

(1) to an applicant who fails to satisfy a requirement of this chapter; or

(2) on a determination by TALCB that:

(A) there is probable cause to believe that any person who owns more than five percent of the appraisal management company or any controlling person of the company has, within the 12 months preceding the date of the application, violated a provision of this chapter to which a registrant would be subject;

(B) the applicant has, while registered under this chapter, demonstrated incompetency, untrustworthiness, or conduct or practices that render the registrant unfit to perform appraisal management services; or

(C) the applicant no longer performs appraisal management services in good faith and is a source of detriment, injury, or loss to the public.

(b) Requires TALCB to immediately provide written notice to the applicant of TALCB's denial of a registration under this chapter.

(c) Provides that an appeal of the denial of a registration is governed by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION NUMBER. Requires TALCB to:

- (1) issue a unique registration number to each appraisal management company registered under this chapter; and
- (2) publish annually a list of the companies registered under this chapter and the registration number of each company.

Sec. 1104.107. EXPIRATION OF REGISTRATION. Provides that, unless renewed, a registration issued under this chapter expires on the first anniversary of the date the registration is issued.

[Reserves Sections 1104.108-1104.150 for expansion.]

SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY

Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED. Prohibits an appraisal management company registered under this chapter from knowingly:

- (1) employing a person in a position in which the person has the responsibility to order appraisals or to review completed appraisals if the person has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state;
- (2) entering into any independent contractor arrangement with any person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; or
- (3) entering into any contract, agreement, or other business relationship with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship with any person who has ever had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION. Requires an appraisal management company registered under this chapter to verify that an individual to whom the company is making an assignment for the completion of an appraisal:

- (1) is licensed or certified under Chapter 1103 (Real Estate Appraisers); and
- (2) has not had a license or certificate as an appraiser denied, revoked, or surrendered in lieu of revocation since the last time the company made an assignment for an appraisal to the appraiser.

Sec. 1104.153. APPRAISAL REVIEW. Requires a person who performs an appraisal review for an appraisal management company to be licensed or certified under Chapter 1103.

Sec. 1104.154. COMPETENCY OF APPRAISERS. Requires an appraisal management company, before making an assignment to an appraiser, to verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

Sec. 1104.155. COMPLIANCE WITH FEDERAL LAW. Requires an appraisal management company registered under this chapter to ensure that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

Sec. 1104.156. PROFESSIONAL STANDARDS. Requires an appraisal management company registered under this chapter to review on a periodic basis the work of all appraisers performing appraisal services for the company to ensure that the services comply with:

- (1) the most current edition of the Uniform Standards of Professional Appraisal Practice; or
- (2) other standards prescribed by TALCB rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

Sec. 1104.157. BUSINESS RECORDS. Requires an appraisal management company registered under this chapter or that has applied for registration under this chapter to retain all business records relating to each service request that the company receives and the appraiser who performs the appraisal for the company.

Sec. 1104.158. COMPENSATION OF APPRAISERS. Requires an appraisal management company to:

- (1) pay an appraiser, except in cases of breach of contract or substandard performance of services, for the completion of an appraisal or valuation assignment not later than the 60th day after the date the appraiser provides the completed appraisal or valuation assignment to the company or its assignee; and
- (2) compensate appraisers at a rate that is reasonable and customary for appraisals being performed in the market area of the property being appraised without the services of an appraisal management company.

Sec. 1104.159. STATEMENT OF FEES. (a) Requires an appraisal management company to separately state the fees:

- (1) paid to an appraiser for the completion of an appraisal; and
- (2) charged by the company for appraisal management services.

(b) Prohibits an appraisal management company from:

- (1) prohibiting an appraiser from recording the fee that the appraiser was paid by the company for the performance of the appraisal in the appraisal report that is submitted by the appraiser to the company; or
- (2) including any fees for appraisal management services performed by the company in the amount the company charges for the actual completion of an appraisal by an appraiser.

Sec. 1104.160. ADVERTISING. Requires an appraisal management company registered under this chapter to disclose the company's registration number on all print and electronic advertising, including any electronic advertising or communication conducted on the Internet.

Sec. 1104.161. MANDATORY REPORTING. Requires an appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, violating applicable laws, or otherwise engaging in unethical or unprofessional conduct to refer the matter to TALCB.

Sec. 1104.162. REMOVAL OF APPRAISER FROM APPRAISAL PANEL. (a) Prohibits a company, other than during the first 30 days after the date an appraiser is first added to the appraisal panel of an appraisal management company, from removing an

appraiser from its panel, or otherwise refusing to assign requests for appraisal services to an appraiser without:

(1) notifying the appraiser in writing of the reasons for removal from the company's panel;

(2) if the appraiser is being removed from the panel for illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, notifying the appraiser of the nature of the alleged conduct or violation; and

(3) providing an opportunity for the appraiser to respond to the notification.

(b) Authorizes an appraiser who is removed from the appraisal panel of an appraisal management company for alleged illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, to file a complaint with TALCB for a review of the decision of the company.

(c) Prohibits TALCB, in a review under Subsection (b), from making any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the grounds for the removal.

(d) Requires TALCB to hear and resolve a complaint filed under Subsection (b) not later than the 180th day after the date the complaint is filed with TALCB.

(e) Requires TALCB to order that an appraiser be returned to the appraisal panel of the appraisal management company if, after opportunity for hearing and review, TALCB determines that the appraiser did not commit the alleged violation. Prohibits the appraisal management company from refusing to make assignments for appraisal services or otherwise penalize the appraiser after returning the appraiser to the company's appraisal panel.

[Reserves Sections 1104.163-1104.200 for expansion.]

SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES

Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. Authorizes TALCB to censure an appraisal management company or conditionally or unconditionally suspend or revoke any registration issued under this chapter if TALCB determines that the appraisal management company has:

(1) violated or attempted to violate this chapter or any rule adopted by TALCB under this chapter; or

(2) procured or attempted to procure a license or registration by fraud, misrepresentation, or deceit.

Sec. 1104.202. PROHIBITED PRACTICES. (a) Prohibits an appraisal management company or an employee, director, officer, or agent of an appraisal management company from:

(1) causing or attempting to cause the appraised value of a property assigned under an appraisal to be based on any factor other than the independent judgment of the appraiser;

- (2) causing or attempting to cause the mischaracterization of the appraised value of a property in conjunction with a consumer credit transaction;
- (3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a consumer credit transaction;
- (4) altering, modifying, or otherwise changing a completed appraisal report submitted by an appraiser by:
 - (A) permanently removing the appraiser's signature or seal; or
 - (B) adding information to or removing information from the appraisal report with an intent to change the valuation conclusion;
- (5) conditioning the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;
- (6) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the appraiser's completion of an appraisal;
- (7) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;
- (8) making any part of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including a loan closing, or a specific valuation being achieved by the appraiser in the appraisal report;
- (9) withholding or threatening to withhold timely payment for an appraisal report or appraisal services rendered when the appraisal report or services are provided in accordance with the contract between the parties;
- (10) withholding or threatening to withhold future business from an appraiser;
- (11) demoting or terminating or threatening to demote or terminate an appraiser;
- (12) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
- (13) providing to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits;
- (14) allowing the removal of an appraiser from an appraisal panel, without prior written notice to the appraiser;
- (15) obtaining, using, or paying for a second or subsequent appraisal or order an automated valuation model in connection with a mortgage financing transaction unless:

(A) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and that basis is clearly and appropriately noted in the loan file; or

(B) the subsequent appraisal or automated valuation model is done under a bona fide pre-funding or post-funding appraisal review or quality control process;

(16) prohibiting or inhibiting communication between the appraiser and:

(A) the lender;

(B) a real estate license holder; or

(C) any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;

(17) requesting, for the purpose of facilitating a mortgage loan transaction:

(A) a broker price opinion; or

(B) any other real property price or value estimation that does not qualify as an appraisal; or

(18) requiring an appraiser to:

(A) prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area;

(B) prepare an appraisal report under a schedule that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations;

(C) provide the appraisal management company with the appraiser's digital signature or seal;

(D) modify any aspect of an appraisal report;

(E) engage in any act or practice that does not comply with:

(i) the Uniform Standards of Professional Appraisal Practice; or

(ii) any assignment conditions and certifications required by the client; or

(F) engage in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(b) Prohibits Subsection (a) from being construed as prohibiting:

(1) an appraiser from voluntarily providing the appraiser's digital signature to another person; or

(2) an appraisal management company from asking an appraiser to:

(A) consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal;

(B) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(C) correct errors in the appraisal report.

Sec. 1104.203. COMPLAINT. (a) Authorizes any person, including a member of TALCB, to file with TALCB a written complaint on a form prescribed by TALCB.

(b) Authorizes TALCB, on its own motion, to file a complaint against an appraisal management company registered under this chapter.

Sec. 1104.204. REVIEW AND INVESTIGATION. (a) Requires TALCB, on receipt of a complaint or on its own motion, to review and investigate an alleged act or omission that TALCB believes is a ground for disciplinary action.

(b) Requires an investigator designated by the presiding officer of TALCB to investigate each allegation in a complaint to determine whether probable cause exists for a hearing on the complaint.

(c) Requires TALCB or the commissioner of TALCB to dismiss the complaint and prohibits them from taking further action if TALCB determines that a complaint does not present facts that are grounds for disciplinary action.

Sec. 1104.205. GENERAL SUBPOENA AUTHORITY. (a) Authorizes TALCB to request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) Authorizes TALCB to also issue a subpoena for purposes of an investigation of a complaint to determine whether TALCB should institute a contested case proceeding.

(c) Authorizes TALCB, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by TALCB may be held if a person does not comply with a subpoena.

(d) Requires the court to order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Sec. 1104.206. REPORT OF INVESTIGATION REQUIRED. (a) Requires the investigator, at the conclusion of the investigation of a complaint, to submit to TALCB a written report to enable TALCB to determine what further action is necessary.

(b) Requires that the report contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraisal management company.

Sec. 1104.207. ACTION BASED ON REPORT. Authorizes TALCB, based on the report submitted under Section 1104.206, to:

- (1) order further investigation of the complaint;
- (2) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or
- (3) determine that there is probable cause to believe that a violation occurred and proceed as the complainant with a contested case hearing under Chapter 2001, Government Code.

Sec. 1104.208. NOTICE OF HEARING. Requires TALCB to personally deliver or send by certified mail to the company notice of the hearing not later than the 30th day before the hearing date of a contested case involving an appraisal management company.

Sec. 1104.209. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Provides that, except as otherwise provided by this chapter, a proceeding under this subchapter is subject to Chapter 2001, Government Code.

Sec. 1104.210. ACTION AFTER HEARING. Requires the administrative law judge, on conclusion of a contested case hearing under this subchapter, to:

- (1) make findings of fact and conclusions of law; and
- (2) issue to TALCB a proposal for decision that TALCB shall take one or more of the following actions:
 - (A) dismiss the charges, including issuing an order declaring that the case file is confidential;
 - (B) revoke the appraisal management company's registration;
 - (C) suspend the registration of the appraisal management company for a period of not more than five years;
 - (D) impose a period of probation, with or without conditions;
 - (E) issue a public or private reprimand or a warning; or
 - (F) require the payment of costs expended by TALCB associated with the contested case, including legal fees and administrative costs.

[Reserves Sections 1104.211-1104.250 for expansion.]

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 1104.251. IMPOSITION OF PENALTY. Authorizes TALCB to impose an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

Sec. 1104.252. AMOUNT OF PENALTY. (a) Prohibits the amount of the administrative penalty from exceeding \$25,000 for each violation. Provides that each day of a continuing violation is a separate violation.

- (b) Requires that the amount of the penalty be based on:
 - (1) the seriousness of the violation;

- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts made to correct the violation; and
- (5) any other matter that justice may require.

Sec. 1104.253. NOTICE OF VIOLATION AND PENALTY. (a) Requires TALCB to give written notice of a violation to the person alleged to have committed the violation if, after investigating a possible violation and the facts surrounding that possible violation, TALCB determines that a violation occurred.

(b) Requires that the notice:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the proposed administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 1104.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, not later than the 30th day after the date the person receives the notice, to:

- (1) accept TALCB's determination, including the proposed administrative penalty; or
- (2) make a written request for a hearing on that determination.

(b) Requires TALCB by order to approve the determination and impose the proposed penalty if the person accepts TALCB's determination.

Sec. 1104.255. HEARING. (a) Requires TALCB, if the person timely requests a hearing, to:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

(b) Requires the hearings examiner to make findings of fact and conclusions of law and promptly issue to TALCB a proposal for decision regarding the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 1104.256. DECISION BY BOARD. (a) Authorizes TALCB by order to determine, based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, that:

- (1) a violation has occurred and may impose an administrative penalty; or
- (2) a violation did not occur.

(b) Requires TALCB to give notice of the order to the person. Requires that the notice include:

- (1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed; and

(3) a statement of the right of the person to judicial review of the order.

Sec. 1104.257. **OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** (a) Requires the person, not later than the 30th day after the date on which the order becomes final, to:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Authorizes a person who acts under Subsection (a)(3), within the 30-day period following the date on which the order becomes final, to:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to TALCB by certified mail.

(c) Authorizes TALCB, if it receives a copy of an affidavit as provided by Subsection (b)(2), to file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 1104.258. **COLLECTION OF PENALTY.** Authorizes TALCB to refer the matter to the attorney general for collection if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed.

Sec. 1104.259. **DETERMINATION BY COURT.** (a) Authorizes the court to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount if the court sustains the determination that a violation occurred.

(b) Requires the court to order that a penalty is not owed if the court does not sustain the determination that a violation occurred.

Sec. 1104.260. **REMITTANCE OF PENALTY AND INTEREST.** (a) Requires the court, if, after judicial review, the administrative penalty is reduced or not imposed by the court, to, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person by TALCB if the person paid the penalty under Section 1104.257(a)(2); or

(2) if the person paid the penalty under Section 1104.257(b)(1)(A) or posted a supersedeas bond, order TALCB to:

(A) execute a complete release of the escrow account or bond, as appropriate, if the penalty is not imposed; or

(B) release the escrow account or bond, as appropriate, after the reduced penalty has been paid from the account or by the person.

(b) Provides that the interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires that the interest be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 1104.261. EXPENSES AND COSTS. (a) Provides that, in this section, "reasonable expenses and costs" includes expenses incurred by TALCB and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) Authorizes TALCB to assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. Requires the person to pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of TALCB requiring the payment of expenses and costs is final. Authorizes TALCB to refer the matter to the attorney general for collection of the expenses and costs.

(c) Authorizes the attorney general to recover, on behalf of the attorney general and TALCB, reasonable expenses and costs if the attorney general brings an action against a person to enforce an administrative penalty assessed under this subchapter and the person is found liable for an administrative penalty.

Sec. 1104.262. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is subject to Chapter 2001, Government Code.

SECTION 2. Requires TALCB, not later than January 1, 2012, to adopt all rules, fees, and forms as required by Chapter 1104, Occupations Code, as added by this Act.

SECTION 3. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 1104.101 and Subchapter F, Chapter 1104, Occupations Code, as added by this Act: March 1, 2012.