

BILL ANALYSIS

Senate Research Center
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By: Eltife
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The portion of the Texas Occupations Code that regulates the licensing of real estate agents and brokers is in need of clean-up to address and clarify issues pertaining to terminology, licensing, education, the recovery fund, Texas Real Estate Commission (TREC) promulgated contracts and forms, TREC members and employees, and TREC complaint, investigation, and enforcement procedure. Chapter 1101 of the Occupations Code pertains to the licensing of real estate agents and brokers.

As proposed, S.B. 699 amends current law relating to the Texas Real Estate Commission and the regulation of certain real estate professionals, increases a fee, and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Real Estate Commission (commission) in SECTION 9 (Section 1101.058, Occupations Code), SECTION 59 (1101.558, Occupations Code), and SECTION 68 (1101.615, Occupations Code) of this bill.

Rulemaking authority previously granted to the commission is modified in SECTION 4 (Sections 1101.003, Occupations Code), SECTION 17 (Sections 1101.152, Occupations Code), SECTION 20 (Sections 1101.156, Occupations Code), SECTION 22 (Sections 1101.202, Occupations Code), SECTION 26 (Sections 1101.301, Occupations Code), SECTION 27 (Sections 1101.304, Occupations Code), SECTION 40 (Sections 1101.362, Occupations Code), and SECTION 54 (Sections 1101.455, Occupations Code), of this bill.

Rulemaking authority previously granted to the commission is rescinded in SECTION 26 (Sections 1101.301, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 1101, Occupations Code, to read as follows:

CHAPTER 1101. REAL ESTATE BROKERS AND SALES AGENTS

SECTION 2. Amends Sections 1101.002(1), (1-a), (4), and (7), Occupations Code, to redefine "broker," "business entity," and "license holder." Defines "sales agent," rather than "salesperson."

SECTION 3. Amends the heading to Section 1101.003, Occupations Code, to read as follows:

Sec. 1101.003. QUALIFYING REAL ESTATE COURSES.

SECTION 4. Amends Section 1101.003, Occupations Code, by amending Subsections (a) and (c) and adding Subsections (d) and (e), as follows:

(a) Provides that, for purposes of this chapter, "qualifying real estate courses," rather than "core real estate courses," include certain courses set forth by this subsection. Changes references to salesperson to sales agent and makes nonsubstantive changes.

(c) Authorizes the Texas Real Estate Commission (commission), by rule, to prescribe the content of the qualifying, rather than core, real estate courses as set forth in Subsection (a) and the title and content of additional qualifying courses. Makes conforming changes.

(d) Prohibits a daily course segment for a qualifying course from exceeding 12 hours.

(e) Prohibits a license holder from reporting to the commission the completion of an alternative delivery or correspondence course offered as a qualifying course until the elapsed time between the time the license holder registers for and reports the completion of the course exceeds twice the number of hours for which credit is claimed.

SECTION 5. Amends Section 1101.004, Occupations Code, as follows:

Sec. 1101.004. New heading: REAL ESTATE BROKERAGE. Provides that a person is engaged in real estate brokerage, rather than acts as a broker or salesperson, under this chapter if the person performs certain actions set forth by this subsection.

SECTION 6. Amends Subchapter A, Chapter 1101, Occupations Code, by adding Section 1101.0051, as follows:

Sec. 1101.0051. EXEMPTION. Provides that a person is not required to obtain a license under this chapter for engaging in the following conduct: constructing, remodeling, or repairing a home or other building; sponsoring, promoting, or managing, or otherwise participating as a principal, partner, or financial manager of, an investment in real estate; or entering into an obligation to pay another person that is secured by an interest in real property.

SECTION 7. Amends Section 1101.056, Occupations Code, by adding Subsection (c), as follows:

(c) Provides that the presiding officer, assistant presiding officer, and secretary constitute the executive committee of the commission.

SECTION 8. Amends Section 1101.057(c), Occupations Code, to require that if the executive director of the Texas Department of Licensing and Regulation (executive director) rather than the administrator of the commission (administrator), has knowledge that a potential ground for removal exists, the executive director, rather than the administrator, is required to notify the presiding officer of the commission of the potential ground. Makes conforming changes.

SECTION 9. Amends Section 1101.058, Occupations Code, as follows:

Sec. 1101.058. PER DIEM; REIMBURSEMENT. (a) Creates this subsection from existing text and makes no further change in this subsection.

(b) Authorizes the commission, by rule, for purposes of this section, to determine what constitutes a day or actual and necessary expenses.

SECTION 10. Amends Subchapter B, Chapter 1101, Occupations Code, by adding Sections 1101.060 and 1101.061, as follows:

Sec. 1101.060. QUASI-JUDICIAL IMMUNITY. Provides that a member of the commission is entitled to quasi-judicial immunity from suit for an action that is taken as a member of the commission; and is in compliance with the law.

Sec. 1101.061. EDUCATIONAL PRESENTATIONS. (a) Authorizes a member of the commission or a commission employee to make a presentation to a group of license holders for which the license holders may receive credit under Section 1101.455 (Continuing Education Requirements). Prohibits a commission member or employee from receiving compensation for the presentation.

- (b) Authorizes a commission member or employee, notwithstanding Subsection (a), to receive reimbursement for reasonable travel expenses.

SECTION 11. Amends the heading to Subchapter C, Chapter 1101, Occupations Code, to read as follows:

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER COMMISSION
PERSONNEL

SECTION 12. Amends the heading to Section 1101.101, Occupations Code, to read as follows:

Sec. 1101.101. EXECUTIVE DIRECTOR AND OTHER PERSONNEL.

SECTION 13. Amends Sections 1101.101(a), (b), and (d), Occupations Code, as follows:

- (a) Requires the commission to appoint an executive director, rather than an administrator.
- (b) Authorizes the commission to designate a subordinate officer as deputy executive director, rather than assistant administrator, to act for the executive director, rather than the administrator, in the executive director's absence. Makes a conforming change.
- (d) Makes a conforming change.

SECTION 14. Amends Section 1101.102, Occupations Code, to change a reference to the administrator to the executive director.

SECTION 15. Amends Section 1101.105, Occupations Code, as follows:

Sec. 1101.105. New heading: CAREER DEVELOPMENT PROGRAM; PERFORMANCE EVALUATIONS. (a) Requires the executive director, rather than the administrator, or the executive director's designee to develop an intra-agency career development program, rather than an intra-agency career ladder program. Makes a conforming change.

- (b) Changes a reference to the administrator to the executive director, and makes a conforming change.

SECTION 16. Amends Sections 1101.106(a) and (b), Occupations Code, as follows:

- (a) Changes a reference to the administrator to the executive director and makes a conforming change.
- (b) Requires a policy statement prepared under Subsection (a) to cover a two-year, rather than annual, period, and be updated with each strategic plan filed as required by Chapter 2056 (Strategic Plans of Operation), Government Code, rather than be updated at least annually and be filed with the governor.

SECTION 17. Amends Section 1101.152(a), Occupations Code, as follows:

- (a) Requires the commission to adopt rules to charge and collect fees in amounts reasonable and necessary to cover the costs of administering this chapter, including a fee for:
 - (1) Makes no change to this subdivision;
 - (2) renewal of a broker license, rather than annual renewal of a broker license;
 - (3) filing an original application for a sales agent license, rather than a salesperson license;

(4) renewal of a sales agent license, rather than annual renewal of a salesperson license;

(5) registration as an easement or right-of-way agent, rather than annual registration;

(6)-(11) Makes no change to these subdivisions;

(12) filing an application for approval of an instructor of qualifying, rather than core, real estate courses;

(13)-(14) Makes no change to these subdivisions;

(15) filing a request, rather than an application, for a moral character determination; and

(16) Makes no change to this subdivision.

SECTION 18. Amends Section 1101.153, Occupations Code, by adding Subsection (c), to provide that this section expires September 1, 2017.

SECTION 19. Amends Section 1101.154, Occupations Code, as follows:

Sec. 1101.154. ADDITIONAL FEE: TEXAS REAL ESTATE RESEARCH CENTER.

(a) Provides that the fee for the issuance or renewal broker of a license is the amount of the fee set under Section 1101.152 (Fees), rather than Sections 1101.152 and 1101.153 (Fee Increase), and an additional \$70 fee per year, rather than an additional \$20 fee; the fee for a sales agent license, rather than a salesperson license, is the amount of the fee set under Section 1101.152 and an additional \$20 fee per year; and the fee for a certificate of registration is the amount of the fee set under Section 1101.152 and an additional \$20 fee per year.

(b) Requires the commission to transmit, not less than quarterly, the additional fees collected under Subsection (a) to Texas A&M University for deposit in a separate banking account that may be appropriated only to support, maintain, and carry out the purposes, objectives, and duties of the Texas Real Estate Research Center.

SECTION 20. Amends Section 1101.156(b), Occupations Code, as follows:

(b) Prohibits the commission from including in rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

(1)-(3) Makes no change to these subdivisions;

(4) restricts the person's advertisement under a trade name that is authorized by a law of this state and registered with the commission.

SECTION 21. Amends Section 1101.161, Occupations Code, as follows:

Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. Authorizes the commission to solicit and accept a gift, grant, donation, or other item of value from any source to pay for any activity under this chapter, Chapter 1102 (Real Estate Inspectors), 1103 (Real Estate Appraisers), 1104 (Appraisal Management Companies), or 1303 (Residential Service Companies), or Chapter 221 (Texas Timeshare Act), Property Code.

SECTION 22. Amends Section 1101.202(a), Occupations Code, as follows:

(a) Requires the commission by rule to:

(1) prescribe a notice the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission; and

(2) establish methods by which consumers and service recipients are provided the notice by a person regulated under this chapter or Chapter 1102.

Deletes existing text requiring the commission, by rule, to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission. Deletes existing text authorizing the commission to provide for that notice on each application for a license or certificate of registration or written contract for services of a person regulated under this chapter or Chapter 1102, on a sign prominently displayed in the place of business of each person regulated under this chapter or Chapter 1102, in a bill for services provided by a person regulated under this chapter or Chapter 1102, in conjunction with the notice required by Section 1101.615, or to be prominently displayed on the Internet website of a person regulated under this chapter or Chapter 1102.

SECTION 23. Amends Section 1101.205, Occupations Code, to provide that Section 1101.204 (Complaint Investigation and Disposition) applies to an investigation under this section.

SECTION 24. Amends Subchapter E, Chapter 1101, Occupations Code, by adding Section 1101.2051, as follows:

Sec. 1101.2051. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Provides that information or material, including an investigation file, is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena, if the information or material is prepared or compiled by the commission in connection with a complaint, investigation, or audit of any person subject to the jurisdiction of the commission.

(b) Authorizes information or material prepared or compiled by the commission in connection with a complaint, investigation, or audit, notwithstanding Subsection (a), to be disclosed:

(1) to the respondent of the complaint;

(2) to a person that is the subject of an audit;

(3) to a person providing a service to the commission, an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;

(4) to an entity in another jurisdiction that licenses, registers, credentials, or disciplines any person subject to the jurisdiction of the commission;

(5) to a law enforcement agency; or

(6) to the commission, or a panel of the commission, for use during any proceeding conducted by the State Office of Administrative Hearings (SOAH) or in a subsequent trial or appeal of a commission action or order.

(c) Provides that the release of information under Subsection (b) does not waive or affect the confidentiality of the information or waive the right to assert exceptions to required disclosure of the information in the future.

(d) Authorizes the commission to require that a confidentiality agreement be signed by a person entitled to receive information under Subsection (b) before releasing the information.

(e) Provides that, notwithstanding Subsection (a), a completed audit report or a final order of the commission, including an agreed order, is public information and not excepted from disclosure.

SECTION 25. Amends the heading to Subchapter G, Chapter 1101, Occupations Code, to read as follows:

SUBCHAPTER G. APPROVAL OF REAL ESTATE EDUCATIONAL PROGRAMS AND COURSES OF STUDY

SECTION 26. Amends Section 1101.301, Occupations Code, as follows:

Sec. 1101.301. New heading: APPROVAL OF PROGRAMS AND COURSES OF STUDY. (a) Authorizes the commission, as necessary for the administration of this chapter and Chapter 1102, to by rule establish standards for the approval of qualifying educational programs or courses of study in real estate and real estate inspection conducted in this state, excluding programs and courses offered by accredited colleges and universities.

Deletes existing text authorizing the commission, as necessary for the administration of this chapter and Chapter 1102, to establish standards for the accreditation of educational programs or courses of study in real estate and real estate inspection conducted in this state, excluding programs and courses offered by accredited colleges and universities, establish by rule reasonable criteria for the approval of real estate and real estate inspection courses, and inspect and accredit real estate and real estate inspection educational programs or courses of study. Makes nonsubstantive changes.

(b) Requires the commission to determine whether a real estate or real estate inspection course satisfies the requirements of this chapter or, rather than and, Chapter 1102 for the purposes of granting credit to an applicant.

(c) Requires the commission, in establishing approval, rather than accreditation, standards for an educational program under Subsection (a), to adopt rules setting an examination passage rate benchmark for each category of license issued by the commission under this chapter or Chapter 1102. Requires that the benchmark be based on the average percentage of examinees that pass the licensing exam on the first attempt. Requires that a program meet or exceed the benchmark for each license category before the commission may renew the program's approval to offer a program or course of study, rather than the program's accreditation, for the license category.

(d) Authorizes the commission to deny approval of an application to offer a program or course of study, rather than an application for accreditation, if the applicant owns or controls, or has previously owned or controlled, an educational program or course of study for which approval to offer a program or course of study was revoked. Makes a conforming change.

(e) Authorizes the commission, notwithstanding Subsection (c), to renew a program's approval to offer a program or course of study on a probationary basis if the commission determines that the program is capable of meeting the benchmark under Subsection (c) within a reasonable time established by the commission.

SECTION 27. Amends Section 1101.304, Occupations Code, as follows:

Sec. 1101.304. EXAMINATION PASSAGE RATE DATA. (a) Requires the commission to adopt rules regarding the collection and publication of data relating to examination passage rates for graduates of educational programs approved under this subchapter, rather than for graduates of accredited educational programs.

(b) Makes a conforming change.

(c) Requires the commission to adopt rules for determining the educational program a graduate is affiliated with for purposes of this section, rather than providing that in determining the educational program a graduate is affiliated with for purposes of this section the educational program is the program the graduate last attended.

SECTION 28. Amends Sections 1101.305(a) and (c), Occupations Code, as follows:

(a) Authorizes the commission to appoint a committee to review the performance of an educational program performing below the standards set by the commission under Section 1101.301. Deletes existing text requiring the committee to consist of at least one commission member, at least one member of the commission staff, individuals licensed under this chapter or Chapter 1102, and a representative from the Texas Real Estate Research Center.

(c) Changes a reference to accreditation to approval.

SECTION 29. Amends Sections 1101.351(a), (b), and (c), Occupations Code, as follows:

(a) and (b) Changes references to salesperson to sales agent.

(c) Prohibits a licensed sales agent, from engaging or attempting to engage in real estate brokerage, rather than from acting or attempting to act as a broker or salesperson, unless the sales agent, is sponsored by, rather than associated with, a licensed broker and is acting for that broker. Makes conforming changes.

SECTION 30. Amends Sections 1101.352(a), (b), and (d), Occupations Code, as follows:

(a) and (b) Makes nonsubstantive changes.

(d) Requires each applicant, at the time an application is submitted under Subsection (a), to provide the commission with the applicant's current mailing address and telephone number, and the applicant's business e-mail address if available.

SECTION 31. Amends Section 1101.3521(b), Occupations Code, as follows:

(b) Requires the commission to refuse to issue a license to or renew a license on active status of a person who does not comply with the requirement of Subsection (a). Makes a nonsubstantive change.

SECTION 32. Amends Section 1101.353(a), Occupations Code, as follows:

(a) Requires the commission, if before applying for a license under this chapter a person requests that the commission determine whether the person's moral character complies with the commission's moral character requirements for licensing under this chapter and pays the required fee, rather than the fee prescribed by Section 1101.152, to make its determination of the person's moral character.

SECTION 33. Amends Section 1101.354, Occupations Code, as follows:

Sec. 1101.354. GENERAL ELIGIBILITY REQUIREMENTS. Requires a person, to be eligible to receive a license under this chapter, to:

(1) at the time of application:

(A) makes no change to this paragraph;

(B) and (C) Makes nonsubstantive changes;

(D) have earned a high school diploma or an equivalent certificate;

(2) Makes no change to this subdivision;

(3) Makes a nonsubstantive change;

(4) complete the required courses of study, including any required qualifying, rather than core, real estate courses prescribed under this chapter.

Deletes Subdivision (5) requiring a person, to be eligible to receive a license number under this chapter, to complete at least three classroom hours of course work on federal, state, and local laws governing housing discrimination, housing credit discrimination, and community reinvestment, or three semester hours of course work on constitutional law.

SECTION 34. Amends Section 1101.355, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Changes reference to agent to broker.

(b) Prohibits a business entity from acting as a broker unless the entity's designated broker is a licensed individual broker in active status and good standing according to the commission's records. Makes a conforming change.

(b-1) Authorizes the commissioner, in determining whether a designated broker is in good standing under this section, to consider:

(1) the disciplinary history of the broker or any business entity for which the broker serves or previously served as a designated broker; and

(2) the payment status of any amount owed to the commission by the broker, or any business entity for which the broker serves or previously served as a designated broker.

SECTION 35. Amends Section 1101.356(a), Occupations Code, as follows:

(a) Requires an applicant for a broker license to provide to the commission satisfactory evidence that the applicant:

(1) makes no change to this subdivision;

(2) has successfully completed at least 60 semester hours, or equivalent classroom hours, of postsecondary education, including:

(A) at least 18 semester hours or equivalent classroom hours of qualifying, rather than core, real estate courses, two semesters of which must consist of a real estate brokerage course completed not more than two years before the application date, rather than which must be real estate brokerage; and

(B) at least 42 semester hours of qualifying, rather than core, real estate courses or related courses accepted by the commission. Makes a nonsubstantive change.

SECTION 36. Amends Section 1101.357, Occupations Code, as follows:

Sec. 1101.357. **BROKER LICENSE: ALTERNATE EXPERIENCE REQUIREMENTS FOR CERTAIN APPLICANTS.** Requires that an applicant for a broker license who does not satisfy the experience requirements of Section 1101.356 (Broker License: Experience and Education Requirements) to provide to the commission satisfactory evidence that:

- (1) Change a reference to salesperson to sales agent and makes a nonsubstantive change;
- (2) the applicant was licensed in this state as a broker in the six months, rather than year, preceding the date the application is filed.

SECTION 37. Amends Section 1101.358, Occupations Code, as follows:

Sec. 1101.358. New heading: **SALES AGENT LICENSE: EDUCATION REQUIREMENTS.** (a) Changes a reference to salesperson to sales agent, and a reference to core real estate courses to qualifying real estate courses.

- (b) Changes a reference to salesperson to sales agent.
- (c) Changes references to salesperson to sales agent.

SECTION 38. Amends Section 1101.359, Occupations Code, to change a reference to salesperson to sales agent.

SECTION 39. Amends Sections 1101.360(a) and (c), Occupations Code, as follows:

- (a) Authorizes a resident of another state who is not a licensed real estate broker and who was formerly licensed in this state as a broker or sales agent, rather than salesperson, to apply for a license under this chapter not later than six months after expiration of the former, rather than not later than the first anniversary of the date of the expiration of the former license.
- (c) Authorizes an action under this subsection to be commenced by service of process or pleading authorized by the laws of this state or by delivery of process on by the executive director, rather than the administrator, or deputy executive director, rather than the assistant administrator, of the commission.

SECTION 40. Amends Section 1101.362, Occupations Code, to authorize the commission to, by rule, waive some or all of the requirements for a license under this chapter for an applicant who was licensed under this chapter within the two years, rather than six years, preceding the date the application is filed.

SECTION 41. Amends Section 1101.363(b), Occupations Code, as follows:

- (b) Changes references to salesperson to sales agent. Deletes text providing that, notwithstanding Section 1101.367(b), the licensed broker is not required to pay the fee required by that subsection.

SECTION 42. Amends Sections 1101.366(a), (b), (c), and (d), Occupations Code, as follows:

- (a) Changes a reference to salesperson to sales agent.
- (b) Authorizes the commission to place on inactive status the license of a broker whose license has expired if the broker applies for inactive status on a form prescribed by the commission not later than six months after the expiration date of the broker's license, rather than not later than the first anniversary of the expiration date of the broker's license.

(c) Changes references to salesperson to sales agent.

(d) Prohibits a broker on inactive status from performing any activity regulated under this chapter and requires the broker to pay renewal fees, rather than annual renewal fees.

SECTION 43. Amends Section 1101.367, Occupations Code, as follows:

Sec. 1101.367. New heading: INACTIVE LICENSE: SALES AGENT. (a) Requires the terminating party to immediately notify in writing both the other party and the commission when the relationship of a sales agent with the sales agent's sponsoring broker terminates, rather than requires the broker to immediately return the salesperson license to the commission when the association of a salesperson with the salesperson's sponsoring broker terminates. Deletes existing text providing that a salesperson license returned under this subsection is inactive.

(b) Authorizes the commission to return to active status, rather than remove from inactive status, a sales agent license under Subsection (a) if, before the expiration date of the sales agent license, a licensed broker files a request with the commission advising the commission that the broker assumes sponsorship of the sales agent, accompanied by the appropriate fee.

(c) Requires an inactive sales agent, rather than an inactive salesperson whose license is not subject to the education requirements of Section 1101.454 (Salesperson License Renewal), as a condition of returning to active status, to provide to the commission proof of attending continuing education, rather than proof of attending at least 15 hours of continuing education, as specified by Section 1101.455 during the two years preceding the date the application to return to active status is filed.

SECTION 44. Amends Sections 1101.401(c) and (d), Occupations Code, to change a reference to salesperson to sales agent.

SECTION 45. Amends Section 1101.402, Occupations Code, as follows:

Sec. 1101.402. WAIVER OF EXAMINATION. Requires the commission to waive the examination requirement for an applicant for a broker or sales agent license if: the applicant was previously licensed in this state as a broker or sales agent; and the application is filed before the second anniversary, of the expiration date of the equivalent license. Deletes existing text requiring the commission to waive the examination requirement for an applicant for a salesperson license if the applicant was previously licensed in this state as a broker or salesperson, and the application is filed before the first anniversary of the expiration date of that license. Makes nonsubstantive changes.

SECTION 46. Amends Section 1101.404, Occupations Code, as follows:

Sec. 1101.404. EXAMINATION RESULTS. (a) Requires the commission or the testing service, not later than the 10th day, rather than the 30th day, after an examination is administered, to notify each examinee of the results of the examination. Deletes existing text requiring the commission to notify each examinee of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service, if an examination is graded or reviewed by a national testing service.

(b) Requires the commission to notify each examinee of the reason for the delay before the 10th day, if the notice of the results of an examination will be delayed for more than 10 days after the examination date, rather than requiring the commission to notify each examinee of the reason for the delay before the 90th day, if the notice of the results of an examination graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date.

(c) Requires the commission to provide to a person an analysis of the person's performance on the examination, if requested in writing by a person who failed the examination. Requires that a request be accompanied by a statement identifying the person and a fee in an amount determined by the commission. Requires the commission to release the analysis directly to the person requesting the analysis.

(d) Provides that the results of an examination are confidential.

SECTION 47. Amends Section 1101.405, Occupations Code, as follows:

Sec. 1101.405. REEXAMINATION. (a) Creates this subsection from existing text and makes no further change to this subsection.

(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 the commission that the applicant has completed additional education, as prescribed by the commission, since the date of the applicant's last examination.

SECTION 48. Amends Subchapter I, Chapter 1101, Occupations Code, by adding Section 1101.406, as follows:

Sec. 1101.406. GUIDELINES; STUDY GUIDES. (a) Requires the commission 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.

(b) Provides that, except for the examination and other testing products that require secure and discreet protection, the contents of study guides and other material developed by the commission or with the commission's authorization are within the public domain and free of copyright restrictions.

(c) Prohibits a person other than the commission from profiting from the reproduction and distribution of material described by Subsection (b) and authorizes that person to sell the material only at a price that equals the cost of reproducing and distributing the material.

SECTION 49. Amends Section 1101.451(f), Occupations Code, to authorize a person to obtain a new license by complying, rather than submitting to reexamination and complying, rather than submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

SECTION 50. Amends Section 1101.452(a), Occupations Code, to delete existing text requiring a license holder, to renew an active license that is not subject to the education requirements of Section 1101.454, to provide to the commission proof of compliance with the continuing education requirements of Section 1101.455.

SECTION 51. Amends Section 1101.453, Occupations Code amended to read as follows:

Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR BUSINESS ENTITIES. (a) Changes a reference to agent to broker.

(b) Prohibits a business entity from acting as a broker unless the entity's designated broker is a licensed individual broker in active status and good standing according to the commission's records. Makes a conforming change.

SECTION 52. Amends the heading to Section 1101.454, Occupations Code, to read as follows:

Sec. 1101.454. SALES AGENT LICENSE RENEWAL.

SECTION 53. Amends Section 1101.454(a), Occupations Code, as follows:

(a) Requires an applicant applying for the first renewal of a sales agent license, rather than salesperson license, to provide to the commission satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, of qualifying, rather than core, real estate courses, including the hours required by Section 1101.455(e).

SECTION 54. Amends Sections 1101.455(c), (e), (f), (h), (i), (j), and (l), Occupations Code, as follows:

(c) Authorizes the commission by rule to:

(1) Makes no change to this subdivision; and

(2) approve as a substitute for the classroom attendance required by Subsection (b) relevant educational experience and alternative delivery or correspondence courses.

(e) Requires that at least eight, rather than six, of the continuing education hours required by Subsection (b) provide current information on, rather than cover, the following legal topics:

(1)-(7) Makes no change to these subdivisions;

(8) promulgated, rather than current, contract and addendum forms;

(9) and (10) Makes no change to these subdivisions;

(11)-(14) Makes nonsubstantive changes; or

(15) the ethical requirements of engaging in real estate brokerage.

(f) Authorizes the remaining hours, rather than the remaining nine hours, to be devoted to other real estate-related topics and courses approved by the commission.

(h) Changes a reference to core real estate courses to qualifying real estate courses.

(i) Prohibits the commission from requiring an examination under this section for a course unless the course is an alternative delivery or correspondence course, or a course described by Subsection (e) or Section 1101.458, rather than a course offered by an alternative delivery system, including delivery by computer. Makes nonsubstantive changes.

(j) Requires that daily classroom course segments offered under this section be at least one hour and not more than 10 hours.

(l) Prohibits a license holder from reporting to the commission the completion of an alternative delivery or correspondence course, offered under this section until the elapsed time between the time the license holder registers for and reports the completion of the course is equal to or greater than the number of hours for which credit is claimed, rather than prohibiting an offered under this section from being completed in less than 24 hours.

SECTION 55. Amends Section 1101.458(a), Occupations Code, to require a designated broker for a business entity licensed under this chapter, a broker who sponsors a sales agent, rather than a salesperson, or a license holder who supervises another license holder to attend during the term of the current license at least six classroom hours of broker responsibility education courses approved by the commission. Makes nonsubstantive changes.

SECTION 56. Amends Section 1101.552(e), Occupations Code, to require a license holder to provide the commission with the license holder's current mailing address and telephone number, and the license holder's business e-mail address if available.

SECTION 57. Amends Section 1101.553, Occupations Code, to require a residential rental locator to prominently display in a place accessible to clients and prospective clients certain items, including the notice required by Section 1101.202(a), rather than the name, mailing address, and telephone number of the commission as provided by Section 1101.202(a).

SECTION 58. Amends Section 1101.554, Occupations Code, as follows:

Sec. 1101.554. New heading: COPY OF SALES AGENT LICENSE. Requires the commission to deliver a copy of each sales agent license to the broker that is sponsoring the salesperson, rather than requiring the commission to deliver or mail a copy of each salesperson license to the broker with whom the salesperson is associated.

SECTION 59. Amends Section 1101.558, Occupations Code, by adding Subsections (b-1) and (b-2) and amending Subsection (c), as follows:

(b-1) Requires the license holder, at the time of a 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 in at least a 10-point font that:

(1) describes the ways in which a broker can represent a party to a real estate transaction, including as an intermediary;

(2) describes the basic duties and obligations a broker has to a party to a real estate transaction that the broker represents; and

(3) provides the name, license number, and contact information for the license holder and the license holder's supervisor and broker, if applicable.

(b-2) Requires the commission by rule to prescribe the text of the notice required under Subsections (b-1)(1) and (2) and establish the methods by which a license holder is required to provide the notice.

(c) Provides that a license holder is not required to provide the notice required by Subsection (b-1) if the proposed transaction is for a residential lease for less than one year and a sale is not being considered; the license holder meets with a party who the license holder knows is represented by another license holder; or the communication occurs at a property that is held open for any prospective buyer or tenant and the communication concerns that property.

Deletes existing text requiring a license holder to provide to a party to a real estate transaction at the time of the first substantive dialogue with the party the written statement prescribed by Subsection (d) unless the proposed transaction is for a residential lease for not more than one year and a sale is not being considered or the license holder meets with a party who is represented by another license holder.

SECTION 60. Amends Subchapter M, Chapter 1101, Occupations Code, by adding Section 1101.6011, as follows:

Sec. 1101.6011. APPLICABILITY TO BUSINESS ENTITY. Provides that, for purposes of this subchapter, a claim against a business entity license holder is also a claim against the broker who is the business entity's designated broker.

SECTION 61. Amends Section 1101.602, Occupations Code, as follows:

Sec. 1101.602. ENTITLEMENT TO REIMBURSEMENT. Provides that an aggrieved person is entitled to reimbursement from the trust account if a person described by

Section 1101.601 (Real Estate Recovery Trust Account) engages in conduct that requires a license or certificate of registration under this chapter and is described by Section 1101.652(a-1)(1) or (b) or Section 1101.653(1)-(4) (relating to acts authorizing suspension or revoking of a certificate of registration), as applicable. Deletes a reference to Section 1101.652(a)(3) from sections relating to conduct entitling a person to a reimbursement.

SECTION 62. Amends Sections 1101.603(a), (c), and (e), Occupations Code, as follows:

(a) Requires the commission to collect, in addition to other fees required by this chapter, a fee of \$10 to deposit to the credit of the trust account from an applicant for an original license or certificate of registration, rather than requiring an applicant for an original license to pay a fee of \$10 in addition to other fees required by this chapter.

(c) Deletes existing text requiring the commission to deposit fees collected under Subsections (a) and (b) (relating to applicant fees for an original certificate of registration) to the credit of the trust account. Changes a reference to salesperson to sales agent and makes nonsubstantive changes.

(e) Requires each license or certificate holder, on a determination by the commission at any time that the balance in the trust account is less than \$1 million, at the next renewal to pay, in addition to the renewal fee, an additional fee of \$10, rather than requiring each license holder, on a determination by the commission at any time that the balance in the trust account is less than \$1 million, at the next license renewal to pay, in addition to the renewal fee, a fee that is equal to the lesser of \$10 or a pro rata share of the amount necessary to obtain a balance in the trust account of \$1.7 million.

SECTION 63. Amends Section 1101.605(b), Occupations Code, to require an aggrieved person and the license or certificate holder against whom an action is brought to notify the commission in writing before entry of the agreed judgment and deliver a copy of all petitions and pleadings and the proposed agreed judgment to the commission when the aggrieved person brings an action for a judgment that may result in an agreed judgment and order for payment from the trust account, and makes a nonsubstantive change.

SECTION 64. Amends Section 1101.606 Occupations Code, by amending Subsections (a) and (b) and adding Subsection (c-1), as follows:

(a) Provides that Subsections (c) (relating to aggrieved persons precluded by bankruptcy from executing judgment) and (c-1), rather than Subsection (c), are exceptions to this section.

(b) Authorizes the aggrieved person and the commission to attempt to reach a settlement of the claim before setting a hearing before the court. Provides that if the aggrieved person does not schedule a hearing before the first anniversary of the date the application was filed, recovery is waived, rather than requiring the court to proceed promptly on the application.

(c-1) Prohibits an aggrieved person from filing a verified claim in the court that entered the judgment until the aggrieved person has obtained a judgment against all defendants and received payment from or obtained a writ of execution returned nulla bona for all defendants, if the judgment obtained against the license holder includes multiple defendants who are jointly and severally liable or the judgment against the license holder was severed from a suit with multiple defendants.

SECTION 65. Amends Section 1101.607, Occupations Code to require the aggrieved person to show at the hearing on the application for payment from the trust account certain information, including that the person is not related to the judgment debtor within the first degree by consanguinity, and makes a nonsubstantive change.

SECTION 66. Amends Sections 1101.608(a) and (c), Occupations Code, as follows:

(a) Authorizes the commission, on receipt of notice under Section 1101.606, rather than on receipt of notice under Section 1101.606 and the scheduling of a hearing, to agree to pay all or part of the claim without a hearing. Authorizes the commission, if the commission and the aggrieved person do not reach a settlement or the commission does not agree that the claim meets one or more of the requirements of this subchapter, to notify the attorney general of the State of Texas (attorney general) of the commission's desire to schedule a hearing, enter an appearance, file a response, appear at the hearing, defend the action, or take any other action the commission considers appropriate.

(c) Authorizes the commission to relitigate in the hearing any material and relevant issue that was determined in the action that resulted in the judgment, including an agreed judgment, in favor of the aggrieved person.

SECTION 67. Amends Section 1101.610, Occupations Code, by adding Subsection (e) to provide that, for purposes of this section, a business entity and the broker who is the business entity's designated broker are considered a single license holder.

SECTION 68. Amends Section 1101.615(a), Occupations Code, as follows:

(a) Requires the commission by rule to prescribe a notice regarding the availability of payment from the trust account for aggrieved persons and establish methods by which each license and certificate holder are required to provide the notice to consumers and service recipients.

Deletes existing text requiring each license and certificate holder to provide notice to consumers and service recipients of the availability of payment from the trust account for aggrieved persons in conjunction with the notice required by Section 1101.202 (Complaints), on a written contract for the license or certificate holder's services, on a brochure that the license or certificate holder distributes, on a sign prominently displayed in the license or certificate holder's place of business, in a bill or receipt for the license or certificate holder's services, in a prominent display on the Internet website of a person regulated under this chapter.

SECTION 69. Amends Sections 1101.651(b), (c), and (d), Occupations Code, as follows:

(b) Prohibits a sales agent, rather than a salesperson, to accept compensation for a real estate transaction from a person other than the broker that is sponsoring the sales agent or was sponsoring the sales agent when the sales agent earned the compensation, rather than the broker with whom the salesperson is associated or was associated when the salesperson earned the compensation.

(c) and (d) Makes conforming changes.

SECTION 70. Amends Section 1101.652, Occupations Code, as follows:

Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE. (a) Authorizes the commission to suspend or revoke a license issued under this chapter or Chapter 1102 or take other disciplinary action authorized by this chapter or Chapter 1102 if the license holder:

(1) Makes no change to this subdivision;

(2) procures or attempts to procure a license under this chapter or Chapter 1102 for the license holder, rather than license holder or salesperson, by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(3) Redesignates existing Subdivision (4) as Subdivision (3), makes no further change to this subdivision, and renumbers subdivisions accordingly;

(4) fails to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter or Chapter 1102;

(5) and (6) Makes no change to this subdivision;

(7) disregards or violates this chapter or Chapter 1102.

Deletes existing Subdivision (3) regarding a licensee who engages in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the name of the license holder, and the license holder's spouse, or a person related to the license holder within the first degree by consanguinity.

Deletes existing Subdivision (5) regarding a licensee who fails or refuses to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder.

Deletes existing Subdivision (8) regarding a licensee who fails to use a contract form required by the commission under Section 1101.155 (Rules Relating to Contract Forms).

Deletes designation of Subdivisions (7)-(10).

(a-1) Authorizes the commission to suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:

(1) engages in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the name of the license holder, the license holder's spouse, or a person related to the license holder within the first degree by consanguinity;

(2) fails or refuses to produce on request, within a reasonable time, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder; or

(3) fails to use a contract form required by the commission under Section 1101.155 (Rules Relating to Contract Forms).

(b) Authorizes the commission to suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while engaged in real estate brokerage, rather than while acting as a broker or salesperson, commits certain actions, including failing to deposit within a reasonable time escrow or trust funds the license holder receives in a real estate transaction, rather than the money the license holder receives as escrow agent in a real estate transaction, in trust with a title company authorized to do business in this state or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state. Changes a reference to salesperson to sales agent in Subdivisions (6) and (11).

SECTION 71. Amends Section 1101.655, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Requires, rather than authorizes, the commission to revoke a license, approval, or registration issued under this chapter or Chapter 1102 if:

(1) the commission makes a payment from the real estate recovery trust account under Subchapter M (Real Estate Recovery Trust Account) on behalf of a license or registration holder, rather than the commission makes a payment from the real estate recovery trust account to satisfy all or part of a judgment against the license or registration holder; and

(2) the license or registration holder does not repay the real estate recovery trust account the full amount of a payment made on the license or registration holder's behalf before the 31st day after the date the commission provides notice to the license or registration holder.

(b) Authorizes the commission to probate an order revoking a license, approval, or registration under this section.

(d) Requires the commission, for the purposes of this section, to proceed under Subsection (a) against both the business entity and designated broker if payment is made from the real estate recovery trust account on behalf of a business entity license holder or a designated broker of a business entity license holder.

SECTION 72. Amends Section 1101.6561, Occupations Code, as follows:

Sec. 1101.6561. New heading: **SUSPENSION OR REVOCATION OF EDUCATIONAL PROGRAM.** Authorizes the commission to suspend or revoke the approval to offer a program or course of study, rather than suspend or revoke an accreditation issued under Subchapter G or take any other disciplinary action authorized by this chapter if the provider of an educational program or course of study violates this chapter or a rule adopted under this chapter.

SECTION 73. Amends Section 1101.661, Occupations Code, to delete existing text authorizing the commission to issue a final in a proceeding under this subchapter or Subchapter O (Administrative Penalty) regarding a person whose license has expired during the course of an investigation or administrative proceeding.

SECTION 74. Amends Section 1101.662(c), Occupations Code, to provide that a license may be suspended under this section without notice or hearing on the complaint if institution of proceedings for a contested case hearing, rather than a hearing before the commission, is initiated simultaneously with the temporary suspension and a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

SECTION 75. Amends Subchapter N, Chapter 1101, Occupations Code, by adding Section 1101.663, as follows:

Sec. 1101.663. **REAPPLYING AFTER REVOCATION, SURRENDER, OR DENIAL.** Provides that a person whose license or registration has been revoked, a person who has surrendered a license or registration issued by the commission, or a person whose application for a license or registration has been denied after a hearing under Section 1101.657 (Hearing) may not apply to the commission for a license or registration before the second anniversary of the date of the revocation, surrender, or denial.

SECTION 76. Amends Subchapter N, Chapter 1101, Occupations Code, by adding Section 1101.664, as follows:

Sec. 1101.664. **FAILURE TO APPEAR; COSTS.** (a) Authorizes an administrative law judge to conduct a hearing or enter an order, as the administrative law judge determines

appropriate, if a respondent receives proper notice of the contested case hearing but does not appear in person at the hearing.

(b) Provides that the respondent is bound by the results of the hearing to the same extent as if the respondent had appeared.

(c) Authorizes the administrative law judge to award reasonable costs to the commission on a request for and proof of costs incurred if the respondent fails to appear at the hearing. Defines "costs" in this subsection.

SECTION 77. Section 1101.7015, Occupations Code, as follows:

Sec. 1101.7015. New heading: DELEGATION OF EXECUTIVE DIRECTOR'S AUTHORITY. Changes references to administrator to executive director.

SECTION 78. Amends Section 1101.702(b), Occupations Code, to change a reference to administrator to executive director.

SECTION 79. Amends Section 1101.703, Occupations Code, to delete Subsection (a) designation and to change references to administrator to executive director.

SECTION 80. Amends Section 1101.704, Occupations Code, to change references to administrator to executive director.

SECTION 81. Amends Section 1101.706, Occupations Code, to change a reference to administrator to executive director.

SECTION 82. Amends Sections 1101.707(b) and (c), Occupations Code, to change references to administrator to executive director.

SECTION 83. Amends Section 1101.708, Occupations Code, as follows:

Sec. 1101.708. COLLECTION OF PENALTY. (a) Creates this subsection from existing text and changes a reference to administrator to executive director.

(b) Authorizes the commission to pursue collection of the penalty by any lawful means, if the attorney general notifies the commission that the attorney general will not pursue collection of the penalty.

SECTION 84. Amends the heading to Section 1101.753, Occupations Code, to read as follows:

Sec. 1101.753. CIVIL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR CERTIFICATE HOLDER.

SECTION 85. Amends Section 1101.753(a), Occupations Code, to change a reference to salesperson to sales agent.

SECTION 86. Amends the heading to Section 1101.754, Occupations Code, to read as follows:

Sec. 1101.754. PRIVATE CAUSE OF ACTION FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR CERTIFICATE HOLDER.

SECTION 87. Amends Section 1101.754(a), Occupations Code, to change a reference to salesperson to sales agent.

SECTION 88. Amends the heading to Section 1101.758, Occupations Code, to read as follows:

Sec. 1101.758. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR CERTIFICATE HOLDER.

SECTION 89. Amends Section 1101.758(a), Occupations Code, to change a reference to salesperson to sales agent.

SECTION 90. Amends Section 1101.803, Occupations Code, to change a reference to salesperson to sales agent.

SECTION 91. Amends Section 1101.805(c), Occupations Code, to change a reference to salesperson to sales agent.

SECTION 92. Amends Section 1101.806(b), Occupations Code, to change a reference to salesperson to sales agent.

SECTION 93. Amends Section 1105.003, Occupations Code, by adding Subsection (e-1), to provide that this subsection and Subsection (e) (relating to the deposit of certain fees) expire September 1, 2017.

SECTION 94. Repealers: Sections 1101.106(c) (requiring the governor to deliver a biennial report on equal employment opportunity policy to the legislature), 1101.152(c) (prohibiting the commission from charging certain fees), 1101.455(d) (authorizing the commission to approve supervised video instruction) and (g) (authorizing the commission to consider certain courses), 1101.558(a) (defining "substantive dialogue"), (d) (relating to requirements for a written statement required to be provided for a real estate transaction), and (e) (relating to certain language of the written statement referenced in Subsection (d)), 1101.603(b) (relating to a \$50 fee for an original or renewal certificate), and 1101.615(b) (relating to certain requirements of a written notice license holders are required to provide), Occupations Code.

SECTION 95. Provides that Section 1101.060, Occupations Code, as added by this Act, applies only to an action that is taken by a member of the commission on or after the effective date of this Act. Provides that an action taken before that date is governed by the law in effect on the date the action was taken, and the former law is continued in effect for that purpose.

SECTION 96. Provides that the changes in law made by this Act relating to the eligibility for a license or certificate of registration under Chapter 1101, Occupations Code, or to requirements for an application under that chapter apply only to an application submitted to the commission on or after the effective date of this Act. Provides that an application 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.

SECTION 97. Provides that the changes in law made by this Act relating to an application for inactive status under Chapter 1101, Occupations Code, apply only to an application for inactive status submitted to the commission on or after the effective date of this Act. Provides that an application 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.

SECTION 98. Provides that Section 1101.405, Occupations Code, as amended by this Act, does not apply to an examination taken before the effective date of this Act.

SECTION 99. Requires the commission to publish and make available the guidelines and study guides required by Section 1101.406, Occupations Code, as added by this Act, not later than January 1, 2016.

SECTION 100. Provides that the changes in law made by this Act relating to the requirements for renewal of a license or certificate of registration under Chapter 1101, Occupations Code, or to the continuing education requirements under that chapter apply only to an application for renewal of a license or certificate that expires on or after the effective date of this Act. Provides that a license or certificate of registration that expires before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 101. Requires the commission to adopt rules prescribing the notice required by Section 1101.558, Occupations Code, as amended by this Act, not later than January 1, 2016. Provides that a real estate broker or sales agent is not required to comply with the requirements of that section, as amended by this Act, before that date.

SECTION 102. Provides that the changes in law made by this Act to Subchapter M, Chapter 1101, Occupations Code, apply only to a claim commenced under that subchapter on or after the effective date of this Act. Provides that a claim commenced before that date is governed by the law in effect on the date the claim was commenced, and the former law is continued in effect for that purpose.

SECTION 103. Provides that the changes in law made by this Act relating to the grounds for disciplinary action under Chapter 1101 or 1102, Occupations Code, apply only to conduct that occurs on or after the effective date of this Act. Provides that conduct that occurs before that date is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 104. Effective date: September 1, 2015.