

BILL ANALYSIS

Senate Research Center
87R4518 JG-F

S.B. 1264
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The federal Fair Housing Act (42 U.S.C. 3601 et seq.) and the Texas Fair Housing Act provide two exemptions for individual owners from liability. The first exemption generally involves someone who does not own more than three single-family houses at any one time (the "single-family home exemption"). The second exemption covers someone who has a home with living quarters occupied (or intended to be) by no more than four families living independently of each other and the owner actually maintains and occupies one of them (the "Mrs. Murphy" exemption). However, there are exceptions to these exemptions.

Section 301.041 of the Texas Fair Housing Act states that "(a) Subchapter B does not apply to [the single-family home and Mrs. Murphy exemptions]." Subchapter B contains a laundry list of issues, or types of violations, three of which are clearly exceptions under the federal statute: (a) Section 301.022, Publication, (b) Section 301.026, Residential Real Estate Related Transaction, and (c) Section 301.027, Brokerage Services.

The United States Department of Housing and Urban Development (HUD) researched why the difference between the federal and state statutes exists. HUD found that the state statute was certified by HUD in 1990 after the Texas Commission on Human Rights (TCHR) passed emergency rules containing remedial language to clarify the existence of the above exceptions. After the daily operations of TCHR were transferred to TWC, the rules were re-codified in 2005, but the remedial language was not included.

S.B. 1264 seeks to fix this issue by amending the Texas Property Code, Chapter 301 (Texas Fair Housing Act), by adding language to clarify the exceptions to the exemptions under Section 301.041 to conform to federal law.

As proposed, S.B. 1264 amends current law relating to the applicability of the Texas Fair Housing Act to certain sales and rentals.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 301.041, Property Code, as follows:

Sec. 301.041. New heading: CERTAIN SALES AND RENTALS EXEMPTED. (a) Provides that Sections 301.021 (Sale or Rental), 301.023 (Inspection), 301.024 (Entry Into Neighborhood), and 301.025 (Disability) do not, rather than Subchapter B (Discrimination Prohibited) does not, apply to:

(1) the sale or rental of a single-family house sold or rented by the owner if:

(A) makes no changes to this subdivision; and

(B) the house is sold or rented without:

(i) the use of the sales or rental facilities or services of a broker, agent, or salesperson licensed under Chapter 1101 (Real Estate Brokers and Sales Agents), Occupations Code, or of an employee or agent of a licensed broker, agent, or salesperson, or the facilities or services of any person in the business of selling or renting a dwelling, rather than the owner of a dwelling designed or intended for occupancy by five or more families; or

(2) makes no changes this subdivision.

(b) Provides that the exemption in Subsection (a)(1) applies only to one sale, rather than to one sale or rental, in a 24-month period if the owner was not the most recent resident of the house at the time of the sale. Makes a conforming change.

(c) Provides that Subsection (a) does not prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistants necessary to transfer title.

(d) Provides that, for purposes of Subsection (a), a person is in the business of selling or renting a dwelling if:

(1) the person has, within the preceding year, participated as the seller or landlord in three or more transactions involving the sale or rental of a dwelling or any interest in a dwelling;

(2) the person has, within the preceding year, participated in two or more transactions, other than transactions involving the person's own dwelling, as an agent providing sales or rental facilities or services involving the sale or rental of a dwelling or any interest in a dwelling; or

(3) the person is the owner of a dwelling designed or intended for occupancy by, or that is occupied by, five or more families.

SECTION 2. Effective date: September 1, 2021.