

## **BILL ANALYSIS**

C.S.S.B. 914  
By: Shapleigh  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Created in 1949, the Texas Real Estate Commission (commission) protects consumers engaged in real estate transactions by ensuring that licensees properly represent their client's interests. To accomplish this mission, the agency licenses real estate salespersons, brokers, and home inspectors; sets standards for the practice of real estate professions; and enforces the Real Estate License Act, including investigating and resolving complaints. The commission also regulates private real estate schools, timeshare developers and home warranty companies. The commission provides administrative support to the separate Texas Appraiser Licensing and Certification Board.

The Texas Real Estate Commission (commission) is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the Legislature. The Sunset Advisory Commission recommended to continue the commission as an independent state agency for the standard 12-year period. C.S.S.B. 914 includes several changes in law to address additional areas needing improvement, and subjects the commission to Sunset review in 2019.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTIONS 9, 14, 16, 23, 25, 54 and 57 of this bill.

### **ANALYSIS**

SECTION 1. Amends Section 1101.006, Occupations Code, as follows:

Sec. 1101.006. APPLICATION OF SUNSET ACT. Provides that the Texas Real Estate Commission (commission) is subject to Chapter 325 (Sunset Law), Government Code. Provides that unless continued as provided by that chapter, the commission is abolished and this chapter, Chapter 1102 and 1303 of the Occupations Code, and Chapter 221, Property Code, expire on September 1, 2019, rather than 2007.

SECTION 2. Amends Subchapter A, Chapter 1101, Occupations Code, by adding a Section 1101.007 as follows:

Sec. 1101.007. New heading: COMPLIANCE WITH SUNSET RECOMMENDATIONS. (a) Requires the Texas Real Estate Commission (commission) to comply with and implement the management action recommendations regarding the commission adopted by the Sunset Advisory Commission on January 10, 2007, as result of its review of the commission and report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the commission's implementation of the recommendations.

(b) Provides that this section expires June 1, 2009.

SECTION 3. Amends Section 1101.053, Occupations Code, as follows:

Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Redefines "Texas trade association".

(b) Prohibits a person from being a member of the commission and from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an

exemption to the overtime provisions of the federal Fair Labor Standards Act of 1983 if the person, is an officer, employee, or paid consultant of a Texas trade association in the real estate industry; or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the real estate industry. Deletes existing text prohibiting certain persons from being a commission member employed in a certain capacity; makes a conforming change.

SECTION 4. Amends Sections 1101.057(a) and (c), Occupations Code, as follows:

(a) Sets forth the circumstances that constitute a ground for removal of a member of the commission, including a member that is ineligible for membership under Section 1101.053, Occupations Code, rather than violates a prohibition established by this section.

(c) Requires the administrator to notify the presiding officer of the commission of a potential ground for removal if the administrator has knowledge that a potential ground exists. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Provides that if the potential ground for removal involves the presiding officer, the administrator is required to notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Amends Subchapter B, Chapter 1101, Occupations Code, by adding Section 1101.059, as follows:

Sec. 1101.059. TRAINING. (a) Prohibits a person appointed to and qualified for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a commission meeting until the person completes a training program that complies with this section.

(b) Sets forth the content requirements for a training program under this section.

(c) Entitles a person appointed to the commission to reimbursement for travel expenses incurred while attending the training program, regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 6. Amends Section 1101.101(a), Occupations Code, to require, rather than authorize, the commission to appoint an administrator.

SECTION 7. Amends Section 1101.102, Occupations Code, to require the commission to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission.

SECTION 8. Amends Section 1101.151(b), Occupations Code, to remove language authorizing the commission to authorize specific employees to conduct hearings and issue final decisions in contested cases.

SECTION 9. Amends Sections 1101.152(a) and (b), Occupations Code, as follows:

(a) Requires the commission to adopt rules to charge and collect certain reasonable fees, including a fee for conducting a criminal background check in connection with the annual renewal of a license under this chapter. Deletes existing text providing the maximum amount for fees charged under this section.

(b) Requires, rather than authorizes, the commission to adopt rules to set and collect reasonable fees to implement the continuing education requirements for license holders, including certain fees. Deletes existing text providing the maximum amount for fees charged under this section.

SECTION 10. Amends Subchapter D, Chapter 1101, Occupations Code, by adding Sections 1101.158, 1101.159, and 1101.160, as follows:

Sec. 1101.158. ADVISORY COMMITTEES. (a) Authorizes the commission to appoint advisory committees to perform the advisory functions assigned to the committees by the commission. Provides that an advisory committee under this section is subject to Section 2110 (State Agency Advisory Committees), Government Code.

(b) Prohibits a member of an advisory committee who is not a member of the commission from receiving compensation for service on the committee. Authorizes the member to receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004 (Reimbursement of Members' Expenses), Government Code.

(c) Provides that a member of an advisory committee serves at the will of the commission.

(d) Authorizes an advisory committee to hold a meeting by telephone conference call or other video or broadcast technology.

(e) Provides that advisory committee meetings are subject to Chapter 551 (Open Meetings), Government Code.

Sec. 1101.159. USE OF TECHNOLOGY. Requires the commission to implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions and requires the policy to ensure that the public is able to interact with the commission on the Internet.

Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of commission rules; and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolutions For Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) Requires the commission's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires the commission to designate a trained person to perform certain functions relating to the negotiated rulemaking authority and alternative dispute resolution procedures.

SECTION 11. Amends Section 1101.201(a), Occupations Code, to require the commission to prepare information of public interest describing the functions of the commission. Deletes existing text relating to the procedures by which complaints are filed with and resolved by the commission.

SECTION 12. Amends Section 1101.203, Occupations Code, as follows:

(a) Requires the commission to maintain a system to promptly and efficiently act on complaints filed with the commission and to maintain a file on each complaint. Requires the file to include certain information. Deletes existing text relating to an information file about each complaint filed with the commission that the commission has the authority to resolve.

(b) Requires the commission to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the commission to periodically, rather than at least quarterly, notify the parties to the complaint of the status of the complaint until final disposition, unless the notice would jeopardize undercover investigation authorized under Section 1101.204, Occupations Code. Deletes existing text conditioning the aforementioned requirement on a complaint being filed that the commission has the authority to resolve.

SECTION 13. Amends Section 1101.204, Occupations Code, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Authorizes the commission or commission staff to file a complaint and conduct an investigation as necessary to enforce this chapter, Chapter 1102, Occupations Code, or a rule adopted under those chapters, rather than on its own motion investigate the actions and records of a license holder.

(h) Requires the commission to ensure that the commission gives priority to the investigation of a complaint filed by a consumer and an enforcement case resulting from the consumer complaint. Requires the commission to assign priorities and investigate complaints using a risk-based approach based on certain criteria. Sets forth the criteria.

SECTION 14. Amends Section 1101.301, Occupations Code, by adding Subsection (c), to require the commission to adopt rules that require a program to establish that at least 55 percent of the program's graduates have passed a licensing exam the first time the exam has been taken by the graduates before the commission is authorized to renew the program's accreditation, in establishing accreditation standards for an educational program under Subsection (a) of this section.

SECTION 15. Amends Section 1101.303, Occupations Code, as follows:

Sec. 1101.303. APPROVAL OF CONTINUING EDUCATION PROVIDER OR COURSE OF STUDY. (a) to authorize the commission to authorize the applicant to offer continuing education for a two-year period, if the commission determines that the applicant satisfies the requirements of this subchapter or Section 1102.205, Occupations Code, and any rule adopted under this subchapter or Section 1102.205, Occupations Code; and (b) to authorize the commission to authorize the applicant to offer a continuing education course of study for a two-year period, if the commission determines that the applicant satisfies the requirements of this subchapter or Section 1102.205, Occupations Code, and any rule adopted under this subchapter or Section 1102.205, Occupations Code.

SECTION 16. Amends Subchapter G, Chapter 1101, Occupations Code, by adding Sections 1101.304 and 1101.305, 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 accredited educational programs.

(b) Requires the rules adopted under this section to provide for a method to calculate the examination passage rate, collect the relevant data from the examination administrator or the accredited program, and post the examination passage rate data on the commission's Internet website, in a manner aggregated by educational program and by license group.

(c) Provides 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.

Sec. 1101.305. REVIEW COMMITTEE. (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, Occupations Code. Sets forth the required composition of the committee.

(b) Requires a committee formed under this section to review and evaluate any factor causing an educational program's poor performance and report findings and recommendations to improve performance to the program and to the commission.

(c) Prohibits a committee formed under this section from revoking the accreditation of an educational program and authorizes the commission to temporarily suspend a program in the same manner as a license under Subchapter N (Prohibited Practices and Disciplinary Procedures), Occupations Code.

SECTION 17. Amends Section 1101.364(b), Occupations Code, as follows:

(b) Entitles a person whose license application is denied under this section to a hearing under Section 1101.657, Occupations Code. Deletes existing text requiring an applicant to file an appeal request within a certain timeframe and rendering the commission's decision final if the applicant fails to request the appeal within that timeframe.

SECTION 18. Amends the heading to Section 1101.451, Occupations Code, to read as follows:

Sec. 1101.451. New heading: LICENSE EXPIRATION AND RENEWAL.

SECTION 19. Amends Section 1101.451, Occupations Code, by amending Subsection (d) and adding Subsections (e) and (f), as follows:

(d) Provides that except as provided by Subsection (e), prohibits a renewal fee for a license under this chapter from exceeding, calculated on an annual basis, the amount of the sum of the fees established under Sections 1101.152, 1101.154, and 1101.603 of the Occupations Code.

(e) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. Authorizes the person, if a license has been expired for more than 90 days but less than one year, to renew the license by paying to the commission a fee equal to two times the required renewal fee.

(f) Prohibits the person from renewing the license if the person's license has been expired for one year or longer. Authorizes the person to obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

SECTION 20. Amends Section 1101.457(b), Occupations Code, to authorize the commission to require an applicant under this section to pay a fee not to exceed \$200, in addition to any fee for late renewal of a license under this chapter.

SECTION 21. Amends 1101.657(a), Occupations Code, to entitle a person to a hearing conducted by the State Office of Administrative Hearings (SOAH) if the commission proposes to deny, suspend, or revoke the person's license or certificate of registration.

SECTION 22. Amends Section 1101.658(a), Occupations Code, to entitle a person aggrieved by a ruling, order, or decision under this subchapter, rather than of the commission, to appeal to a district court in the county in which the administrative hearing was held.

SECTION 23. Amends Subchapter N, Chapter 1101, Occupations Code, by adding Sections 1101.659, 1101.660, 1101.661, and 1101.662, as follows:

Sec. 1101.659. REFUND. (a) Authorizes the commission, subject to Subsection (b), to order a person regulated by the commission to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

(b) Prohibits the amount of a refund ordered as provided in an agreement resulting from an informal settlement conference or an enforcement order from

exceeding the amount the consumer paid to the person for a service or accommodation regulated by this commission. Prohibits the commission from requiring payment of other damages or estimating harm in a refund order.

Sec. 1101.660. INFORMAL PROCEEDINGS. (a) Requires the commission, by rule, to adopt procedures governing informal disposition of a contested case.

(b) Requires the rules adopted under this section to provide the complainant and the license holder, certificate holder, or regulated entity an opportunity to be heard; and to require the presence of a public member of the commission for a case involving a consumer complaint and the presence of at least two staff members of the commission with experience in the regulatory area that is the subject of the proceeding.

Sec. 1101.661. FINAL ORDER. Authorizes the commission to issue a final order in a proceeding under this subchapter or Subchapter O, Occupations Code, regarding a person whose license has expired during the course of an investigation or administrative proceeding.

Sec. 1101.662. TEMPORARY SUSPENSION. (a) Requires the presiding officer of the commission to appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) Requires the panel to temporarily suspend the license of that person if the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare.

(c) Authorizes a license to be suspended under this section without notice or hearing on the complaint if the institution of proceedings for 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.

(d) Authorizes the disciplinary panel to hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel, notwithstanding Chapter 551, Government Code.

SECTION 24. Amends Section 1101.701, Occupations Code, as follows:

(a) Creates this Subsection from existing text to make a conforming change.

(b) Requires the commission to periodically review the commission's enforcement procedures and ensure that administrative penalty and disciplinary proceedings are combined into a single enforcement procedure.

(c) Authorizes the commission to combine a proceeding to impose an administrative penalty with another disciplinary proceeding including a proceeding to suspend or revoke a license.

SECTION 25. Amends Section 1101.702, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Increase from \$1,000 to \$5,000 the maximum amount of a fine for an administrative penalty. Provides that each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. Deletes existing text relating to if the commission determined that the person charged engaged in unlicensed activity and was not licensed at any time in the four years preceding the date of the violation from

being a determination on whether each day a violation continues and occurs is authorized to be considered a separate violation for imposing a penalty.

(c) Authorizes the commission, by rule, to adopt a schedule of administrative penalties based on certain criteria for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation. Requires the rules adopted under this subsection to provide authority for the commission to suspend or revoke a license in addition to or instead of imposing an administrative penalty.

SECTION 26. Amends the heading to Section 1101.703, Occupations Code, to read as follows:

Sec. 1101.703. New heading: NOTICE OF VIOLATION AND PENALTY.

SECTION 27. Amends Section 1101.703(a), Occupations Code, as follows:

(a) Authorizes the administrator to issue a notice of violation stating a brief summary of the alleged violation, rather than the facts on which the determination is based; the administrator's recommendation on the imposition of the administrative penalty or another disciplinary sanction, including a recommendation on the amount of the penalty; and that the respondent has the right to a hearing to contest the alleged violation, the recommended penalty, or both, if after an investigation of a possible violation and the facts relating to that violation, the administrator determines a violation has occurred.

SECTION 28. Amends Section 1101.704, Occupations Code, as follows:

Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes a person, not later than the 20th day after the date the person receives notice, to take certain action, including to request in writing a hearing on the occurrence of the violation, the amount of the penalty, or both, rather than a hearing on the determination.

(b) Requires the commission by order to approve the determination and order payment of the recommended penalty or impose the recommended sanction, if the person accepts the administrator's determination, or fails to respond in a timely manner to the notice.

SECTION 29. Amends the heading to Section 1101.705, Occupations Code, to read as follows:

Sec. 1101.705. HEARING; DECISION.

SECTION 30. Amends Sections 1101.705(a), (b), (c), and (e), Occupations Code, as follows:

(a) Requires the administrator to set a hearing and give notice of the hearing to the person if the person requests a hearing. Deletes existing requiring the administrator to take the same action if the person fails to timely respond to the notice.

(b) Requires an administrative law judge of the State Office of Administrative Hearings (SOAH), rather than a hearings examiner designated by the administrator, to conduct the hearing and take certain action.

(c) Makes a conforming change.

(e) Requires the notice of the commission's order given to the person under Chapter 2001, Government Code, to include a statement of the person's right to judicial review of the order. Deletes existing text authorizing the commission to authorize a hearings examiner to conduct the hearing and enter a final decision.

SECTION 31. Amends Section 1101.707, Occupations Code, as follows:

Sec. 1101.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Makes conforming and nonsubstantive changes.

(b) Authorizes a person who files a petition for judicial review, rather than who acts under Subsection (a), within a certain timeframe, to take certain actions, including to request the court to stay enforcement by filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and financially unable to give the supersedeas bond and give a copy of the affidavit to the administrator by certified mail.

(c) Authorizes the administrator to file with the court, within five days after the date the copy is received, a contest to an affidavit, if the administrator receives a copy of the affidavit under Subsection (b)(2) of this section.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and is required 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.

SECTION 32. Amends Subchapter O, Chapter 1101, Occupations Code, by adding Section 1101.7085, as follows:

Sec. 1101.7085. 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 of the penalty 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 finding that a violation occurred.

SECTION 33. Amends Section 1101.709, Occupations Code, as follows:

Sec. 1101.709. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, rather than the administrator, if after judicial review the administrative penalty is reduced or is not upheld by the court, to remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty. Deletes existing text requiring the court to execute a release of the bond if the person gave a supersedeas bond.

(b) Provides the manner in which the interest accrues.

(c) Creates this Subsection from existing text to make a conforming change.

(d) Requires the court to order, when the court's judgment becomes final, the release of the bond, if the person gave a supersedeas bond and the penalty is not upheld by the court.

(e) Requires the court to order the release of the bond after the person pays the reduced amount, if the person gave a supersedeas bond and the amount of the penalty is reduced.

SECTION 34. Amends Subchapter O, Chapter 1101, Occupations Code, by adding Section 1101.710.

Sec. 1101.710. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is subject to Chapter 2001, Government Code.

SECTION 35. Amends Subchapter P, Chapter 1101, Occupations Code, by adding Section 1101.759, as follows:

Sec. 1101.759. CEASE AND DESIST ORDER. (a) Authorizes the commission, after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in the activity if it appears to the commission that a person is

violating this chapter or Chapter 1102, Occupations Code, or a rule adopted under this chapter or Chapter 1102, Occupations Code.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter O, Occupations Code.

SECTION 36. Amends Section 1102.051(a), Occupations Code, to provide that the Texas Real Estate Inspector Committee is an advisory committee appointed by the commission.

SECTION 37. Amends Section 1102.205, Occupations Code, to require the commission to approve, recognize, prepare, or administer a continuing education program for inspectors. Makes a conforming change.

SECTION 38. Amends Section 1102.251, Occupations Code, as follows:

Sec. 1102.251. New heading: FEES. Removes statutory caps on the reasonable and necessary fees the commission is required to charge and collect to cover the cost of administering this chapter for filing certain inspector license applications, renewals, license examination, request to change a place of business or replace a lost or destroyed license, and filing a request for issuance of a license due to a change of name, return to active status, or change in sponsoring professional inspector.

SECTION 39. Amends the heading the Subchapter I, Chapter 1102, Occupations Code, to read as follows:

SUBCHAPTER I. DISCIPLINARY PROCEEDINGS, PENALTIES, AND  
ENFORCEMENT PROVISIONS

SECTION 40. Amends Subchapter I, Chapter 1102, Occupations Code, by adding Section 1102.408, as follows:

Sec. 1102.408. TEMPORARY SUSPENSION. (a) Requires the presiding officer of the commission to appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) Requires the panel to temporarily suspend the license of that person if the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare.

(c) Authorizes a license to be suspended under this section without notice or hearing on the complaint if the institution of proceedings for 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.

(d) Authorizes the disciplinary panel to hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel, notwithstanding Chapter 551, Government Code

SECTION 41. Amends Section 1103.101(a), Occupations Code, to require the administrator of the Texas Real Estate Commission to serve as commissioner, rather than requiring the Texas Appraiser Licensing and Certification Board (board) to employ a commissioner.

SECTION 42. Amends Section 1103.103(a), Occupations Code, to require the administrator of the Texas Real Estate Commission, rather than the Texas Appraiser Licensing and Certification Board (board), to determine the salaries of the officers and employees of the board.

SECTION 43. Amends Section 1103.104, Occupations Code, to set forth the duties of the commissioner, including to manage the staff and employees of the board.

SECTION 44. Amends Section 1103.504, Occupations Code, to prohibit the attorney general from representing the board in a contested case before the State Office of Administrative Hearings (SOAH).

SECTION 45. Amends Sections 1103.508(a) and (d), Occupations Code, as follows:

(a) Requires, rather than authorizes, a contested case hearing to be conducted before an administrative law judge of SOAH.

(d) Makes conforming changes.

SECTION 46. Amends Section 1103.510(a), Occupations Code, to make conforming changes.

SECTION 47. Amends Section 1103.512(c), Occupations Code, to make conforming changes.

SECTION 48. Amends Section 1103.513, Occupations Code, to make conforming changes.

SECTION 49. Amends Section 1103.516, Occupations Code, to make conforming changes.

SECTION 50. Amends Section 1103.518, Occupations Code, as follows:

Sec. 1103.518. New heading: ACTION AFTER HEARING. Requires the administrative law judge to make findings of fact and conclusions of law; and issue to the board a proposal for decision that the board take one or more of certain actions, on conclusion of a contested case hearing and on submission of all written responses allowed under Section 1103.515, Occupations Code.

SECTION 51. Amends Section 1103.520(c), Occupations Code, to make a conforming change.

SECTION 52. Amends Section 1103.521(a), Occupations Code, to make conforming changes.

SECTION 53. Amends Section 1303.052(a) and (b), Occupations Code as follows:

(a) Deletes existing text relating to statutory caps on the fees a residential service company must pay for filing an license application or an amendment to the application.

(b) Deletes existing text relating to statutory caps on the fees a residential service company shall pay for filing an annual report and any other filing required by this chapter.

SECTION 54. Amends Subchapter H, Chapter 1303, Occupations Code, by adding Sections 1303.355 and 1303.356, as follows:

Sec. 1303.355. ADMINISTRATIVE PENALTY. (a) Authorizes the commission to impose an administrative penalty as provided by Subchapter O, Chapter 1101, Occupations Code, on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) Prohibits the amount of an administrative penalty from exceeding \$5,000 for each violation. Authorizes each day a violation continues or occurs to be considered a separate violation for purposes of imposing a penalty.

(c) Requires the administrator, in determining the amount of the penalty, to consider certain factors.

(d) Requires the commission by rule to adopt a schedule of administrative penalties based on the criteria listed in Subsection (c) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation.

Sec. 1303.356. TEMPORARY SUSPENSION. (a) Requires the presiding officer of the commission to appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) Requires the panel to temporarily suspend the license of a person, if the disciplinary panel determines from the information presented to the panel that the person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare.

(c) Authorizes a license to be suspended under this section without notice or hearing on the complaint if institution of proceedings for 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.

(d) Authorizes the disciplinary panel to hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel, notwithstanding Chapter 551, Government Code.

SECTION 55. Amends Subchapter C, Chapter 221, Property Code, by adding Section 221.027, as follows:

Sec. 221.027. TEMPORARY SUSPENSION. (a) Requires the presiding officer of the commission to appoint a disciplinary panel consisting of three commission members to determine whether the registration for a timeshare plan under this chapter should be temporarily suspended.

(b) Requires the panel to temporarily suspend the registration of the timeshare plan, if the disciplinary panel determines from the information presented to the panel that a timeshare plan registered under this chapter would, by the continued disposition of the timeshare property, constitute a continuing threat to the public welfare.

(c) Authorizes a registration to be suspended under this section without notice or hearing on the complaint if the institution of proceedings for 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.

(d) Authorizes the disciplinary panel to hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel, notwithstanding Chapter 551, Government Code.

SECTION 56. Repeals the following Sections of the Occupations Code:

- (1) Section 1101.204(g);
- (2) Sections 1101.364(c), (d), and (e);
- (3) Sections 1101.657(b), (c), and (d);
- (4) Sections 1101.703(b);
- (5) Section 1102.051(b), (c), and (d);
- (6) Section 1102.052;
- (7) Section 1102.053;
- (8) Section 1102.054;
- (9) Section 1102.055;
- (10) Section 1102.056;
- (11) Section 1102.057;
- (12) Section 1102.058(a);

- (13) Section 1102.059;
- (14) Section 1102.061;
- (15) Section 1102.062; and
- (16) Section 1103.508(c).

SECTION 57. (a) Requires the commission to adopt policies required by Sections 1101.159 and 1101.160, Occupations Code, as added by this Act, and to adopt the rules required by Chapter 1101, Occupations Code, as amended by this Act, not later than January 1, 2008.

(b) Requires the administrator of the Texas Real Estate Commission to assume the administrative and management duties over the Texas Appraiser Licensing and Certification Board, as required by Sections 1103.101 and 1103.104, Occupations Code, as amended by this Act, as soon as practicable after the effective date of this Act.

SECTION 58. (a) Provides that the changes in law made by this Act to Section 1101.053, Occupations Code, regarding the prohibitions on or qualifications of members of the Texas Real Estate Commission do not affect the entitlement of a member serving on the commission immediately before September 1, 2007, to continue to serve and function as a member of the commission for the remainder of the member's term.

(b) Provides that the changes in law made by this Act regarding the filing, investigation, or resolution of a complaint under chapter 1101, Occupations Code, as amended by this Act, applies only to a complaint filed with the Texas Real Estate Commission on or after the effective date of this Act.

(c) Provides that the change in law made by this Act regarding the conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act.

(d) Provides that the changes in law made by this Act regarding the procedure for an administrative penalty applies only to a proceeding commenced on or after the effective date of this Act.

(e) Provides that the change in law made by this Act regarding the renewal of an expired license applies only to a license that expires on or after the effective date of this Act.

(f) Provides that the change in law made by this Act regarding accreditation standards for educational programs under Chapter 1101, Occupations Code, as amended by this Act, applies only to an accreditation granted or renewed on or after September 1, 2009. Provides that an educational program renewing an accreditation on or after the effective date of this Act but before September 1, 2009, should strive to meet the new accreditation standards under Chapter 1101, Occupations Code, as amended by this Act, but an accreditation granted or renewed before September 1, 2009, is governed by the law in effect on the date the accreditation expired, and that former law is continued in effect for that purpose.

(g) Provides that the change in law made by this Act to the authority of the Texas Real Estate Inspector Committee to develop and recommend rules under Chapter 1102, Occupations Code, as amended by this Act, applies only to a rule proposed for adoption on or after the effective date of this Act.

SECTION 59. Effective date: September 1, 2007

**EFFECTIVE DATE**

September 1, 2007.

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.S.B. 914 modifies the original by adding a new SECTION 2 to amend Subchapter A, Chapter 1101, Occupations Code, by adding Section 1101.007. COMPLIANCE WITH SUNSET RECOMMENDATIONS. (a) to require the Texas Real Estate Commission (commission) to comply with and implement the management action recommendations regarding the commission adopted by the Sunset Advisory Commission on January 10, 2007, as result of its review of the commission and report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the commission's implementation of the recommendations ; and (b) to provide that this section expires June 1, 2009. The subsequent SECTIONS are renumbered accordingly.

The substitute makes a nonsubstantive change in SECTION 7 which was SECTION 6 of the original.

C.S.S.B. 914 adds a new SECTION 8 to amend Section 1101.151(b), Occupations Code, to remove language authorizing the commission to authorize specific employees to conduct hearings and issue final decisions in contested cases. The subsequent SECTIONS are renumbered accordingly.

C.S.S.B. 914 modifies the original by requiring the commission to adopt rules to charge and collect certain reasonable fees, including a fee for conducting a criminal background check in connection with the annual renewal of a license under this chapter.

C.S.S.B. 914 adds language to the original clarifying that the commission or commission staff may file complaints and conduct investigations.

C.S.S.B. 914 modifies the original by amending Section 1101.451, Occupations Code, by amending Subsection (d) to provide that except as provided by Subsection (e) of this section, prohibits a renewal fee for a license under this chapter from exceeding, calculated on an annual basis, the amount of the sum of the fees established under Sections 1101.152, 1101.154, and 1101.603 of the Occupations Code.

C.S.S.B. 914 modifies the original by deleting existing text relating to if the commission determined that the person charged engaged in unlicensed activity and was not licensed at any time in the four years preceding the date of the violation from being a determination on whether each day a violation continues and occurs is authorized to be considered a separate violation for imposing a penalty.

C.S.S.B. 914 modifies the original by clarifying that the commission by order shall approve the determination and order payment of the recommended penalty or impose the recommended sanction if the person accepts the administrator's determination, or fails to respond in a timely manner to the notice.

C.S.S.B. 914 adds a new SECTION 38 to amend Section 1102.251, Occupations Code to provide a new heading: FEES. and to remove statutory caps on the reasonable and necessary fees the commission is required to charge and collect to cover the cost of administering this chapter for filing certain inspector license applications, renewals, license examination, request to change a place of business or replace a lost or destroyed license, and filing a request for issuance of a license due to a change of name, return to active status, or change in sponsoring professional inspector. The subsequent SECTIONS are renumbered accordingly.

C.S.S.B. 914 adds language to the original to require the administrator of the Texas Real Estate Commission to determine the salaries of the officers and employees of the Texas Appraiser Licensing and Certification Board (board).

C.S.S.B. 914 modifies the original by removing the attorney general from being required to provide legal representation for the public interest in all proceedings before the Texas Appraiser Licensing and Certification Board (board).

C.S.S.B. 914 80(R)

C.S.S.B. 914 adds a new SECTION 53 to amend Sections 1303.052(a) and (b), Occupations Code, to (a) delete existing text relating to statutory caps on the fees a residential service company must pay for filing an license application or an amendment to the application; and (b) delete existing text relating to statutory caps on the fees a residential service company shall pay for filing an annual report and any other filing required by this chapter. The subsequent SECTIONS are renumbered accordingly.

C.S.S.B. 914 modifies the original by amending SECTION 53 (b) of the original, now SECTION 57(b) of the substitute, to add Section 1103.101, Occupations Code, to the list of required sections that the administrator of the Texas Real Estate Commission shall assume the administrative and management duties over the Texas Appraiser Licensing and Certification Board.