

By: Truitt

H.B. No. 3250

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Texas Real Estate
3 Commission and the regulation of real estate brokers, salespersons,
4 inspectors, appraisers, residential service companies, and
5 timeshares; providing administrative penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 1101.006, Occupations Code, is amended
8 to read as follows:

9 Sec. 1101.006. APPLICATION OF SUNSET ACT. The Texas Real
10 Estate Commission is subject to Chapter 325, Government Code (Texas
11 Sunset Act). Unless continued in existence as provided by that
12 chapter, the commission is abolished and this chapter, ~~and~~
13 Chapter 1102, and Chapter 1303 of this code and Chapter 221,
14 Property Code, expire September 1, 2019 [~~2007~~].

15 SECTION 2. Section 1101.053, Occupations Code, is amended
16 to read as follows:

17 Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
18 In this section, "Texas trade association" means a ~~nonprofit,~~
19 cooperative~~]~~ and voluntarily joined statewide association of
20 business or professional competitors in this state designed to
21 assist its members and its industry or profession in dealing with
22 mutual business or professional problems and in promoting their
23 common interest.

24 (b) A person may not be a member of the commission and may

1 not be a commission employee employed in a "bona fide executive,
2 administrative, or professional capacity," as that phrase is used
3 for purposes of establishing an exemption to the overtime
4 provisions of the federal Fair Labor Standards Act of 1938 (29
5 U.S.C. Section 201 et seq.) if:

6 (1) the person is an officer, [~~A state elected~~
7 ~~president, president-elect, vice president, or~~
8 ~~secretary-treasurer,~~] employee, or paid consultant of a Texas trade
9 association in the real estate industry; or

10 (2) the person's spouse [~~may not be a commission member~~
11 ~~and may not be a commission employee who is exempt from the state's~~
12 ~~position classification plan or is compensated at or above the~~
13 ~~amount prescribed by the General Appropriations Act for step 1,~~
14 ~~salary group A17, of the position classification salary schedule.~~

15 [~~(c) A person who~~] is [~~the spouse of~~] an officer, manager,
16 or paid consultant of a Texas trade association in the real estate
17 industry [~~may not be a commission member and may not be a commission~~
18 ~~employee who is exempt from the state's position classification~~
19 ~~plan or is compensated at or above the amount prescribed by the~~
20 ~~General Appropriations Act for step 1, salary group A17, of the~~
21 ~~position classification salary schedule].~~

22 (c) [~~(d)~~] A person may not serve as a commission member or
23 act as the general counsel to the commission if the person is
24 required to register as a lobbyist under Chapter 305, Government
25 Code, because of the person's activities for compensation on behalf
26 of a profession related to the operation of the commission.

27 SECTION 3. Sections 1101.057(a) and (c), Occupations Code,

1 are amended to read as follows:

2 (a) It is a ground for removal from the commission that a
3 member:

4 (1) does not have at the time of appointment the
5 qualifications required by Section 1101.051(a) or (b) or 1101.052;

6 (2) does not maintain during service on the commission
7 the qualifications required by Section 1101.051(a) or (b) or
8 1101.052;

9 (3) is ineligible for membership under [~~violates a~~
10 ~~prohibition established by~~] Section 1101.053;

11 (4) cannot, because of illness or disability,
12 discharge the member's duties for a substantial part of the member's
13 term; or

14 (5) is absent from more than half of the regularly
15 scheduled commission meetings that the member is eligible to attend
16 during each calendar year, unless the absence is excused by
17 majority vote of the commission.

18 (c) If the administrator has knowledge that a potential
19 ground for removal [~~of a commission member~~] exists, the
20 administrator shall notify the presiding officer of the commission
21 of the potential ground. The presiding officer shall then notify
22 the governor and the attorney general that a potential ground for
23 removal exists. If the potential ground for removal involves the
24 presiding officer, the administrator shall notify the next highest
25 ranking officer of the commission, who shall then notify the
26 governor and the attorney general that a potential ground for
27 removal exists.

1 SECTION 4. Subchapter B, Chapter 1101, Occupations Code, is
2 amended by adding Section 1101.059 to read as follows:

3 Sec. 1101.059. TRAINING. (a) A person who is appointed to
4 and qualifies for office as a member of the commission may not vote,
5 deliberate, or be counted as a member in attendance at a meeting of
6 the commission until the person completes a training program that
7 complies with this section.

8 (b) The training program must provide the person with
9 information regarding:

10 (1) this chapter and other laws regulated by the
11 commission;

12 (2) the programs, functions, rules, and budget of the
13 commission;

14 (3) the results of the most recent formal audit of the
15 commission;

16 (4) the requirements of laws relating to open
17 meetings, public information, administrative procedure, and
18 conflicts of interest; and

19 (5) any applicable ethics policies adopted by the
20 commission or the Texas Ethics Commission.

21 (c) A person appointed to the commission is entitled to
22 reimbursement, as provided by the General Appropriations Act, for
23 the travel expenses incurred in attending the training program
24 regardless of whether the attendance at the program occurs before
25 or after the person qualifies for office.

26 SECTION 5. Section 1101.101(a), Occupations Code, is
27 amended to read as follows:

1 (a) The commission shall [~~may~~] appoint an administrator.

2 SECTION 6. Section 1101.102, Occupations Code, is amended
3 to read as follows:

4 Sec. 1101.102. DIVISION OF RESPONSIBILITIES. The
5 commission shall develop and implement policies that clearly
6 separate the policymaking responsibilities of the commission and
7 the management responsibilities of the administrator and the
8 [~~define the respective responsibilities of the commission and the~~
9 ~~commission~~] staff of the commission.

10 SECTION 7. Sections 1101.152(a) and (b), Occupations Code,
11 are amended to read as follows:

12 (a) The commission shall adopt rules to charge and collect a
13 fee for [~~the following fees~~]:

14 (1) [~~for~~] filing an original application for a broker
15 license[~~, not more than \$100~~];

16 (2) [~~for~~] annual renewal of a broker license[~~, not~~
17 ~~more than \$100~~];

18 (3) [~~for~~] filing an original application for a
19 salesperson license[~~, not more than \$75~~];

20 (4) [~~for~~] annual renewal of a salesperson license[~~, not~~
21 ~~more than \$50~~];

22 (5) [~~for~~] annual registration[~~, \$80~~];

23 (6) filing [~~for~~] an application for a license
24 examination[~~, not more than \$100~~];

25 (7) [~~for~~] filing a request for a branch office
26 license[~~, not more than \$20~~];

27 (8) [~~for~~] filing a request for a change of place of

1 business, change of name, return to active status, or change of
2 sponsoring broker [~~7, not more than \$20~~];

3 (9) [~~for~~] filing a request to replace a lost or
4 destroyed license or certificate of registration [~~7, not more than~~
5 ~~\$20~~];

6 (10) [~~for~~] filing an application for approval of an
7 education program under Subchapter G [~~7, not more than \$400~~];

8 (11) [~~for~~] annual operation of an education program
9 under Subchapter G [~~7, not more than \$200~~];

10 (12) [~~for~~] filing an application for approval of an
11 instructor of core real estate courses [~~7, not more than \$40~~];

12 (13) [~~for~~] transcript evaluation [~~7, \$20~~];

13 (14) [~~for~~] preparing a license or registration
14 history [~~7, not more than \$20~~]; and

15 (15) [~~for~~] filing an application for a moral character
16 determination [~~7, not more than \$50~~].

17 (b) The commission shall adopt rules to [~~may~~] set and
18 collect reasonable fees to implement the continuing education
19 requirements for license holders, including a fee for [~~the~~
20 ~~following fees~~]:

21 (1) [~~for~~] an application for approval of a continuing
22 education provider [~~7, not more than \$400~~];

23 (2) [~~for~~] an application for approval of a continuing
24 education course of study [~~7, not more than \$100~~];

25 (3) [~~for~~] an application for approval of an instructor
26 of continuing education courses [~~7, not more than \$40~~]; and

27 (4) [~~for~~] attendance at a program to train instructors

1 of a continuing education course prescribed under Section
2 1101.455[~~, not more than \$100~~].

3 SECTION 8. Subchapter D, Chapter 1101, Occupations Code, is
4 amended by adding Sections 1101.158, 1101.159, and 1101.160 to read
5 as follows:

6 Sec. 1101.158. ADVISORY COMMITTEES. (a) The commission
7 may appoint advisory committees to perform the advisory functions
8 assigned to the committees by the commission. An advisory
9 committee under this section is subject to Section 2110, Government
10 Code.

11 (b) A member of an advisory committee who is not a member of
12 the commission may not receive compensation for service on the
13 committee. The member may receive reimbursement for actual and
14 necessary expenses incurred in performing committee functions as
15 provided by Section 2110.004, Government Code.

16 (c) A member of an advisory committee serves at the will of
17 the commission.

18 (d) An advisory committee may hold a meeting by telephone
19 conference call or other video or broadcast technology.

20 (e) Advisory committee meetings are subject to Chapter 551,
21 Government Code.

22 Sec. 1101.159. USE OF TECHNOLOGY. The commission shall
23 implement a policy requiring the commission to use appropriate
24 technological solutions to improve the commission's ability to
25 perform its functions. The policy must ensure that the public is
26 able to interact with the commission on the Internet.

27 Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE

1 DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop
2 and implement a policy to encourage the use of:

3 (1) negotiated rulemaking procedures under Chapter
4 2008, Government Code, for the adoption of commission rules; and

5 (2) appropriate alternative dispute resolution
6 procedures under Chapter 2009, Government Code, to assist in the
7 resolution of internal and external disputes under the commission's
8 jurisdiction.

9 (b) The commission's procedures relating to alternative
10 dispute resolution must conform, to the extent possible, to any
11 model guidelines issued by the State Office of Administrative
12 Hearings for the use of alternative dispute resolution by state
13 agencies.

14 (c) The commission shall designate a trained person to:

15 (1) coordinate the implementation of the policy
16 adopted under Subsection (a);

17 (2) serve as a resource for any training needed to
18 implement the procedures for negotiated rulemaking or alternative
19 dispute resolution; and

20 (3) collect data concerning the effectiveness of those
21 procedures, as implemented by the commission.

22 SECTION 9. Section 1101.201(a), Occupations Code, is
23 amended to read as follows:

24 (a) The commission shall prepare information of public
25 interest describing the functions of the commission [~~and the~~
26 ~~procedures by which complaints are filed with and resolved by the~~
27 ~~commission~~].

1 SECTION 10. Section 1101.203, Occupations Code, is amended
2 to read as follows:

3 Sec. 1101.203. COMPLAINT INFORMATION. (a) The commission
4 shall maintain a system to promptly and efficiently act on
5 complaints filed with the commission. The commission shall
6 maintain a file on each complaint. The file must include:

7 (1) information relating to the parties to the
8 complaint;

9 (2) the subject matter of the complaint;

10 (3) a summary of the results of the review or
11 investigation of the complaint; and

12 (4) the disposition of the complaint [~~an information~~
13 ~~file about each complaint filed with the commission that the~~
14 ~~commission has authority to resolve].~~

15 (b) The commission shall make information available
16 describing its procedures for complaint investigation and
17 resolution.

18 (c) The [~~If a written complaint is filed with the commission~~
19 ~~that the commission has authority to resolve, the]~~ commission[~~, at~~
20 ~~least quarterly and until final disposition of the complaint,~~
21 shall periodically notify the parties to the complaint of the
22 status of the complaint until final disposition, unless the notice
23 would jeopardize an undercover investigation authorized under
24 Section 1101.204.

25 SECTION 11. Section 1101.204, Occupations Code, is amended
26 by amending Subsection (a) and adding Subsection (h) to read as
27 follows:

1 (a) The commission may file a complaint and conduct an
2 investigation as necessary to enforce this chapter, Chapter 1102,
3 or a rule adopted under those chapters~~[, on its own motion,~~
4 ~~investigate the actions and records of a license holder]~~.

5 (h) The commission shall ensure that the commission gives
6 priority to the investigation of a complaint filed by a consumer and
7 an enforcement case resulting from the consumer complaint. The
8 commission shall assign priorities and investigate complaints
9 using a risk-based approach based on the:

10 (1) degree of potential harm to a consumer;

11 (2) potential for immediate harm to a consumer;

12 (3) overall severity of the allegations in the
13 complaint;

14 (4) number of license holders potentially involved in
15 the complaint;

16 (5) previous complaint history of the license holder;
17 and

18 (6) number of potential violations in the complaint.

19 SECTION 12. Section 1101.301, Occupations Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) In establishing accreditation standards for an
22 educational program under Subsection (a), the commission shall
23 adopt rules that require a program to establish that at least 55
24 percent of the program's graduates have passed a licensing exam the
25 first time the exam has been taken by the graduates before the
26 commission may renew the program's accreditation.

27 SECTION 13. Section 1101.303, Occupations Code, is amended

1 to read as follows:

2 Sec. 1101.303. APPROVAL OF CONTINUING EDUCATION PROVIDER OR
3 COURSE OF STUDY. (a) If the commission determines that an
4 applicant for approval as a continuing education provider satisfies
5 the requirements of this subchapter or Section 1102.205 and any
6 rule adopted under this subchapter or Section 1102.205, the
7 commission may authorize the applicant to offer continuing
8 education for a two-year period.

9 (b) If the commission determines that an applicant for
10 approval of a continuing education course of study satisfies the
11 requirements of this subchapter or Section 1102.205 and any rule
12 adopted under this subchapter or Section 1102.205, the commission
13 may authorize the applicant to offer the course of study for a
14 two-year period.

15 SECTION 14. Subchapter G, Chapter 1101, Occupations Code,
16 is amended by adding Sections 1101.304 and 1101.305 to read as
17 follows:

18 Sec. 1101.304. EXAMINATION PASSAGE RATE DATA. (a) The
19 commission shall adopt rules regarding the collection and
20 publication of data relating to examination passage rates for
21 graduates of accredited educational programs.

22 (b) Rules adopted under this section must provide for a
23 method to:

24 (1) calculate the examination passage rate;
25 (2) collect the relevant data from the examination
26 administrator or the accredited program; and

27 (3) post the examination passage rate data on the

1 commission's Internet website, in a manner aggregated by
2 educational program and by license group.

3 (c) In determining the educational program a graduate is
4 affiliated with for purposes of this section, the educational
5 program is the program the graduate last attended.

6 Sec. 1101.305. REVIEW COMMITTEE. (a) The commission may
7 appoint a committee to review the performance of an educational
8 program performing below the standards set by the commission under
9 Section 1101.301. The committee shall consist of:

10 (1) at least one commission member;

11 (2) at least one member of the commission staff;

12 (3) individuals licensed under this chapter or Chapter
13 1102; and

14 (4) a representative from the Texas Real Estate
15 Research Center.

16 (b) A committee formed under this section shall review and
17 evaluate any factor causing an educational program's poor
18 performance and report findings and recommendations to improve
19 performance to the program and to the commission.

20 (c) A committee formed under this section may not revoke the
21 accreditation of an educational program. The commission may
22 temporarily suspend a program in the same manner as a license under
23 Subchapter N.

24 SECTION 15. Section 1101.364(b), Occupations Code, is
25 amended to read as follows:

26 (b) A person whose license application is denied under this
27 section is entitled to a hearing under Section 1101.657. [~~Before~~

1 ~~the applicant may appeal under Section 1101.658, the applicant must~~
2 ~~file, not later than the 10th day after the date the applicant~~
3 ~~receives the notice, an appeal requesting a time and place for a~~
4 ~~hearing before the commission. If the applicant fails to request a~~
5 ~~hearing as provided by this subsection, the commission's decision~~
6 ~~becomes final and is not subject to judicial review.]~~

7 SECTION 16. The heading to Section 1101.451, Occupations
8 Code, is amended to read as follows:

9 Sec. 1101.451. LICENSE EXPIRATION AND RENEWAL.

10 SECTION 17. Section 1101.451, Occupations Code, is amended
11 by adding Subsections (e) and (f) to read as follows:

12 (e) A person whose license has been expired for 90 days or
13 less may renew the license by paying to the commission a fee equal
14 to 1-1/2 times the required renewal fee. If a license has been
15 expired for more than 90 days but less than one year, the person may
16 renew the license by paying to the commission a fee equal to two
17 times the required renewal fee.

18 (f) If a person's license has been expired for one year or
19 longer, the person may not renew the license. The person may obtain
20 a new license by submitting to reexamination and complying with the
21 requirements and procedures for obtaining an original license.

22 SECTION 18. Section 1101.457(b), Occupations Code, is
23 amended to read as follows:

24 (b) The commission may require an applicant under this
25 section to:

26 (1) pay a [an additional] fee, not to exceed \$200, in
27 addition to any fee for late renewal of a license under this

1 chapter; and

2 (2) complete the required continuing education not
3 later than the 60th day after the date the license is issued,
4 renewed, or returned to active status.

5 SECTION 19. Section 1101.657(a), Occupations Code, is
6 amended to read as follows:

7 (a) If the commission proposes to deny, suspend, or revoke a
8 person's license or certificate of registration, the person is
9 entitled to a hearing conducted by the State Office of
10 Administrative Hearings [~~before the commission or a hearings~~
11 ~~officer appointed by the commission~~].

12 SECTION 20. Section 1101.658(a), Occupations Code, is
13 amended to read as follows:

14 (a) A person aggrieved by a ruling, order, or decision under
15 this subchapter [~~of the commission~~] is entitled to appeal to a
16 district court in the county in which the administrative hearing
17 was held.

18 SECTION 21. Subchapter N, Chapter 1101, Occupations Code,
19 is amended by adding Sections 1101.659, 1101.660, 1101.661, and
20 1101.662 to read as follows:

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

27 (b) The amount of a refund ordered as provided in an

1 agreement resulting from an informal settlement conference or an
2 enforcement order may not exceed the amount the consumer paid to the
3 person for a service or accommodation regulated by this commission.
4 The commission may not require payment of other damages or estimate
5 harm in a refund order.

6 Sec. 1101.660. INFORMAL PROCEEDINGS. (a) The commission
7 by rule shall adopt procedures governing informal disposition of a
8 contested case.

9 (b) Rules adopted under this section must:

10 (1) provide the complainant and the license holder,
11 certificate holder, or regulated entity an opportunity to be heard;
12 and

13 (2) require the presence of:

14 (A) a public member of the commission for a case
15 involving a consumer complaint; and

16 (B) at least two staff members of the commission
17 with experience in the regulatory area that is the subject of the
18 proceeding.

19 Sec. 1101.661. FINAL ORDER. The commission may issue a
20 final order in a proceeding under this subchapter or Subchapter O
21 regarding a person whose license has expired during the course of an
22 investigation or administrative proceeding.

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

1 (b) If the disciplinary panel determines from the
2 information presented to the panel that a person licensed to
3 practice under this chapter would, by the person's continued
4 practice, constitute a continuing threat to the public welfare, the
5 panel shall temporarily suspend the license of that person.

6 (c) A license may be suspended under this section without
7 notice or hearing on the complaint if:

8 (1) institution of proceedings for a hearing before
9 the commission is initiated simultaneously with the temporary
10 suspension; and

11 (2) a hearing is held under Chapter 2001, Government
12 Code, and this chapter as soon as possible.

13 (d) Notwithstanding Chapter 551, Government Code, the
14 disciplinary panel may hold a meeting by telephone conference call
15 if immediate action is required and convening the panel at one
16 location is inconvenient for any member of the panel.

17 SECTION 22. Section 1101.701, Occupations Code, is amended
18 to read as follows:

19 Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)
20 The commission may impose an administrative penalty on a person who
21 violates this chapter or a rule adopted or order issued by the
22 commission under this chapter.

23 (b) The commission shall periodically review the
24 commission's enforcement procedures and ensure that administrative
25 penalty and disciplinary proceedings are combined into a single
26 enforcement procedure.

27 (c) The commission may combine a proceeding to impose an

1 administrative penalty with another disciplinary proceeding,
2 including a proceeding to suspend or revoke a license.

3 SECTION 23. Section 1101.702, Occupations Code, is amended
4 by amending Subsection (a) and adding Subsection (c) to read as
5 follows:

6 (a) The amount of an administrative penalty may not exceed
7 \$5,000 [~~\$1,000~~] for each violation. Each day a violation continues
8 or occurs may be considered a separate violation for purposes of
9 imposing a penalty if the commission determines that the person
10 charged:

11 (1) engaged in an activity for which a broker or
12 salesperson license is required without holding a license; and

13 (2) was not licensed by the commission as a broker or
14 salesperson at any time in the four years preceding the date of the
15 violation.

16 (c) The commission by rule shall adopt a schedule of
17 administrative penalties based on the criteria listed in Subsection
18 (b) for violations subject to an administrative penalty under this
19 section to ensure that the amount of a penalty imposed is
20 appropriate to the violation. The rules adopted under this
21 subsection must provide authority for the commission to suspend or
22 revoke a license in addition to or instead of imposing an
23 administrative penalty.

24 SECTION 24. The heading to Section 1101.703, Occupations
25 Code, is amended to read as follows:

26 Sec. 1101.703. [~~REPORT AND~~] NOTICE OF VIOLATION AND
27 PENALTY.

1 SECTION 25. Section 1101.703(a), Occupations Code, is
2 amended to read as follows:

3 (a) If, after investigation of a possible violation and the
4 facts relating to that violation, the administrator determines that
5 a violation has occurred, the administrator may issue a notice of
6 violation [~~report~~] stating:

7 (1) a brief summary of the alleged violation [~~the~~
8 ~~facts on which the determination is based~~]; [~~and~~]

9 (2) the administrator's recommendation on the
10 imposition of the administrative penalty or another disciplinary
11 sanction, including a recommendation on the amount of the penalty;
12 and

13 (3) that the respondent has the right to a hearing to
14 contest the alleged violation, the recommended penalty, or both.

15 SECTION 26. Section 1101.704, Occupations Code, is amended
16 to read as follows:

17 Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
18 Not later than the 20th day after the date the person receives the
19 notice under Section 1101.703, the person may:

20 (1) accept the administrator's determination,
21 including the recommended administrative penalty; or

22 (2) request in writing a hearing on the occurrence of
23 the violation, the amount of the penalty, or both [~~determination~~].

24 (b) If the person accepts the administrator's
25 determination, or fails to respond in a timely manner to the notice,
26 the commission by order shall approve the determination and order
27 payment of the recommended penalty.

1 SECTION 27. The heading to Section 1101.705, Occupations
2 Code, is amended to read as follows:

3 Sec. 1101.705. HEARING; DECISION [~~BY COMMISSION~~].

4 SECTION 28. Sections 1101.705(a), (b), (c), and (e),
5 Occupations Code, are amended to read as follows:

6 (a) If the person requests a hearing [~~or fails to timely~~
7 ~~respond to the notice~~], the administrator shall set a hearing and
8 give notice of the hearing to the person.

9 (b) An administrative law judge of the State Office of
10 Administrative Hearings [~~A hearings examiner designated by the~~
11 ~~administrator~~] shall conduct the hearing. The administrative law
12 judge [~~hearings examiner~~] shall:

13 (1) make findings of fact and conclusions of law; and

14 (2) promptly issue to the commission a proposal for
15 decision regarding the occurrence of the violation and the amount
16 of any proposed administrative penalty.

17 (c) Based on the findings of fact, conclusions of law, and
18 proposal for decision of the administrative law judge [~~hearings~~
19 ~~examiner~~], the commission by order may determine that:

20 (1) a violation occurred and impose an administrative
21 penalty; or

22 (2) a violation did not occur.

23 (e) The notice of the commission's order given to the person
24 under Chapter 2001, Government Code, must include a statement of
25 the person's right to judicial review of the order. [~~The commission~~
26 ~~may authorize the hearings examiner to conduct the hearing and~~
27 ~~enter a final decision.~~]

1 SECTION 29. Section 1101.707, Occupations Code, is amended
2 to read as follows:

3 Sec. 1101.707. OPTIONS FOLLOWING DECISION: PAY OR
4 APPEAL. (a) Not later than the 30th day after the date the
5 commission's order becomes final, the person shall:

6 (1) pay the administrative penalty; or

7 (2) file a petition for judicial review [~~with a~~
8 ~~district court in Travis County~~] contesting the occurrence [~~fact~~]
9 of the violation, the amount of the penalty, or both.

10 (b) Within the 30-day period prescribed by Subsection (a), a
11 person who files a petition for judicial review [~~acts under~~
12 ~~Subsection (a)(2)~~] may:

13 (1) stay enforcement of the penalty by:

14 (A) [~~(1)~~] paying the penalty to the court
15 [~~administrator~~] for placement in an escrow account; or

16 (B) [~~(2)~~] giving the court [~~administrator~~] a
17 supersedeas bond in a form approved by the court [~~administrator~~]
18 that:

19 (i) [~~(A)~~] is for the amount of the penalty;

20 and

21 (ii) [~~(B)~~] is effective until judicial
22 review of the order is final; or

23 (2) request the court to stay enforcement by:

24 (A) [~~(3)~~] filing with the court [~~administrator~~]
25 an affidavit of the person stating that the person is financially
26 unable to pay the penalty and is financially unable to give the
27 supersedeas bond; and

1 (B) giving a copy of the affidavit to the
2 administrator by certified mail.

3 (c) If the administrator receives a copy of an affidavit
4 under Subsection (b)(2), the administrator may file with the court,
5 within five days after the date the copy is received, a contest to
6 the affidavit [~~A person who fails to take action as provided by this~~
7 ~~section waives the right to judicial review of the commission's~~
8 ~~order~~].

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

15 SECTION 30. Subchapter O, Chapter 1101, Occupations Code,
16 is amended by adding Section 1101.7085 to read as follows:

17 Sec. 1101.7085. DETERMINATION BY COURT. (a) If the court
18 sustains the determination that a violation occurred, the court may
19 uphold or reduce the amount of the administrative penalty and order
20 the person to pay the full or reduced amount of the penalty.

21 (b) If the court does not sustain the finding that a
22 violation occurred, the court shall order that a penalty is not
23 owed.

24 SECTION 31. Section 1101.709, Occupations Code, is amended
25 to read as follows:

26 Sec. 1101.709. REMITTANCE OF PENALTY AND INTEREST. (a) If
27 after judicial review the administrative penalty is reduced or is

1 not upheld by the court, the court [~~administrator~~] shall [~~+~~
2 [~~(1)~~] remit the appropriate amount, plus accrued
3 interest, to the person if the person paid the penalty [~~, or~~
4 [~~(2)~~ ~~execute a release of the bond if the person gave a~~
5 ~~supersedeas bond~~].

6 (b) The interest [~~Interest~~] accrues [~~under Subsection~~
7 ~~(a)(1)~~] at the rate charged on loans to depository institutions by
8 the New York Federal Reserve Bank.

9 (c) The interest shall be paid for the period beginning on
10 the date the penalty is paid and ending on the date the penalty is
11 remitted.

12 (d) If the person gave a supersedeas bond and the penalty is
13 not upheld by the court, the court shall order, when the court's
14 judgment becomes final, the release of the bond.

15 (e) If the person gave a supersedeas bond and the amount of
16 the penalty is reduced, the court shall order the release of the
17 bond after the person pays the reduced amount.

18 SECTION 32. Subchapter O, Chapter 1101, Occupations Code,
19 is amended by adding Section 1101.710 to read as follows:

20 Sec. 1101.710. ADMINISTRATIVE PROCEDURE. A proceeding
21 under this subchapter is subject to Chapter 2001, Government Code.

22 SECTION 33. Subchapter P, Chapter 1101, Occupations Code,
23 is amended by adding Section 1101.759 to read as follows:

24 Sec. 1101.759. CEASE AND DESIST ORDER. (a) If it appears
25 to the commission that a person is violating this chapter or Chapter
26 1102 or a rule adopted under this chapter or Chapter 1102, the
27 commission, after notice and opportunity for a hearing, may issue a

1 cease and desist order prohibiting the person from engaging in the
2 activity.

3 (b) A violation of an order under this section constitutes
4 grounds for imposing an administrative penalty under Subchapter O.

5 SECTION 34. Section 1102.051(a), Occupations Code, is
6 amended to read as follows:

7 (a) The Texas Real Estate Inspector Committee is an advisory
8 committee [~~consists of nine members~~] appointed by the commission.

9 SECTION 35. Section 1102.205, Occupations Code, is amended
10 to read as follows:

11 Sec. 1102.205. CONTINUING EDUCATION REQUIREMENTS. (a) The
12 commission shall approve, recognize, prepare, or administer a
13 continuing education program for inspectors.

14 (b) As a prerequisite for renewal of a real estate inspector
15 license, professional inspector license, or apprentice inspector
16 license, the inspector must participate in the continuing education
17 program and submit evidence satisfactory to the commission of
18 successful completion of at least 16 classroom hours of core real
19 estate inspection courses or continuing education courses for each
20 year of the license period preceding the renewal.

21 SECTION 36. The heading to Subchapter I, Chapter 1102,
22 Occupations Code, is amended to read as follows:

23 SUBCHAPTER I. DISCIPLINARY PROCEEDINGS, PENALTIES, AND
24 ENFORCEMENT PROVISIONS

25 SECTION 37. Subchapter I, Chapter 1102, Occupations Code,
26 is amended by adding Section 1102.408 to read as follows:

27 Sec. 1102.408. TEMPORARY SUSPENSION. (a) The presiding

1 officer of the commission shall appoint a disciplinary panel
2 consisting of three commission members to determine whether a
3 person's license to practice under this chapter should be
4 temporarily suspended.

5 (b) If the disciplinary panel determines from the
6 information presented to the panel that a person licensed to
7 practice under this chapter would, by the person's continued
8 practice, constitute a continuing threat to the public welfare, the
9 panel shall temporarily suspend the license of that person.

10 (c) A license may be suspended under this section without
11 notice or hearing on the complaint if:

12 (1) institution of proceedings for a hearing before
13 the commission is initiated simultaneously with the temporary
14 suspension; and

15 (2) a hearing is held under Chapter 2001, Government
16 Code, and this chapter as soon as possible.

17 (d) Notwithstanding Chapter 551, Government Code, the
18 disciplinary panel may hold a meeting by telephone conference call
19 if immediate action is required and convening the panel at one
20 location is inconvenient for any member of the panel.

21 SECTION 38. Section 1103.101(a), Occupations Code, is
22 amended to read as follows:

23 (a) The administrator of the Texas Real Estate Commission
24 shall serve as [board shall employ a] commissioner.

25 SECTION 39. Section 1103.103(a), Occupations Code, is
26 amended to read as follows:

27 (a) The board shall determine the salaries of the

1 [~~commissioner,~~] officers[~~,~~] and employees of the board.

2 SECTION 40. Section 1103.104, Occupations Code, is amended
3 to read as follows:

4 Sec. 1103.104. DUTIES OF COMMISSIONER. The commissioner
5 shall:

6 (1) disseminate information;

7 (2) administer rules adopted by the board under this
8 chapter;

9 (3) review each application for a certificate or
10 license and make a recommendation for final action to the board;

11 (4) review and make recommendations to the board
12 regarding the adoption of rules relating to:

13 (A) the examination required by Subchapter F;

14 (B) education and experience requirements for
15 issuance of certificates and licenses;

16 (C) continuing education for a certified or
17 licensed appraiser;

18 (D) standards of professional practice and
19 ethics for a certified or licensed appraiser;

20 (E) standards for a real estate appraisal
21 performed by a certified or licensed appraiser; and

22 (F) the fees established by the board under
23 Section 1103.156;

24 (5) collect fees established by the board; [~~and~~]

25 (6) manage the staff and employees of the board; and

26 (7) perform any other duty prescribed by the board
27 under this chapter.

1 SECTION 41. Section 1103.504, Occupations Code, is amended
2 to read as follows:

3 Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. The
4 attorney general shall provide legal representation for the public
5 interest in all proceedings before the administrative law judge of
6 the State Office of Administrative Hearings [~~board~~] and may not
7 represent the board in a contested case before the State Office of
8 Administrative Hearings [~~board~~].

9 SECTION 42. Sections 1103.508(a) and (d), Occupations Code,
10 are amended to read as follows:

11 (a) A contested case hearing shall [~~may~~] be conducted before
12 an administrative law judge of the State Office of Administrative
13 Hearings [~~a majority of the board members~~].

14 (d) The administrative law judge [~~designated presiding~~
15 ~~officer~~] shall control the proceedings and may:

- 16 (1) administer oaths;
17 (2) admit or exclude testimony or other evidence; and
18 (3) rule on all motions and objections.

19 SECTION 43. Section 1103.510(a), Occupations Code, is
20 amended to read as follows:

21 (a) If an appraiser or appraiser trainee receives proper
22 notice of a contested case hearing but does not appear in person at
23 the hearing, the administrative law judge [~~board and presiding~~
24 ~~officer~~] may conduct the hearing or enter an order, as the judge
25 [~~board~~] determines appropriate.

26 SECTION 44. Section 1103.512(c), Occupations Code, is
27 amended to read as follows:

1 (c) Before testimony may be presented, the record must:

2 (1) show the identities of:

3 (A) any [~~the~~] board members present;

4 (B) the administrative law judge [~~presiding~~
5 ~~officer~~]; and

6 (C) the parties and their representatives; and

7 (2) state that all testimony is being recorded.

8 SECTION 45. Section 1103.513, Occupations Code, is amended
9 to read as follows:

10 Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case
11 hearing shall be conducted in the following order, subject to
12 modification at the discretion of the administrative law judge
13 [~~board~~]:

14 (1) the administrative law judge [~~presiding officer~~]
15 shall read a summary of the charges and answers to the charges and
16 other responsive pleadings filed by the appraiser or appraiser
17 trainee before the hearing;

18 (2) the attorney representing the board shall make a
19 brief opening statement, including a summary of the charges and a
20 list of the witnesses and documents to support the charges;

21 (3) the appraiser or appraiser trainee may make an
22 opening statement, including the names of any witnesses the
23 appraiser or appraiser trainee may call;

24 (4) the attorney representing the board shall present
25 evidence, concluding with a summary of the evidence for the state;

26 (5) the appraiser or appraiser trainee shall present
27 evidence;

1 (6) the attorney representing the board may present
2 rebuttal evidence;

3 (7) the appraiser or appraiser trainee may present
4 rebuttal evidence; and

5 (8) the closing arguments shall be made in the
6 following order:

7 (A) the attorney representing the board;

8 (B) the appraiser or appraiser trainee; and

9 (C) the attorney representing the board on
10 rebuttal.

11 SECTION 46. Section 1103.516, Occupations Code, is amended
12 to read as follows:

13 Sec. 1103.516. DIRECT EXAMINATION. In a contested case
14 hearing, the administrative law judge [~~presiding officer~~] may
15 conduct a direct examination of a witness at any stage of the
16 witness's testimony.

17 SECTION 47. Section 1103.518, Occupations Code, is amended
18 to read as follows:

19 Sec. 1103.518. [~~BOARD~~] ACTION AFTER HEARING. On
20 conclusion of a contested case hearing and on submission of all
21 written responses allowed under Section 1103.515, the
22 administrative law judge shall [~~board~~]:

23 (1) [~~shall~~] make findings of fact and conclusions of
24 law; and

25 (2) issue to the board a proposal for decision that the
26 board [~~may~~] take one or more of the following actions:

27 (A) dismiss the charges, including issuing an

1 order declaring that the case file is confidential;

2 (B) suspend or revoke the appraiser's
3 certificate or license or the appraiser trainee's approval;

4 (C) impose a period of probation with or without
5 conditions;

6 (D) require the appraiser to submit to
7 reexamination for a certificate or license;

8 (E) require the appraiser or appraiser trainee to
9 participate in additional professional education or continuing
10 education;

11 (F) issue a public or private reprimand or a
12 warning;

13 (G) issue a consent order; or

14 (H) impose an administrative penalty as
15 prescribed by Section 1103.552.

16 SECTION 48. Section 1103.520(c), Occupations Code, is
17 amended to read as follows:

18 (c) On rehearing, the administrative law judge [~~board~~]
19 shall consider facts not presented in the original hearing if:

20 (1) the facts arose after the original hearing was
21 concluded;

22 (2) the party offering the evidence could not
23 reasonably have provided the evidence at the original hearing; or

24 (3) the party offering the evidence was misled by a
25 party regarding the necessity for offering the evidence at the
26 original hearing.

27 SECTION 49. Section 1103.521(a), Occupations Code, is

1 amended to read as follows:

2 (a) The administrative law judge [~~board~~] shall file the
3 judge's [~~its~~] final decision in a contested case hearing with the
4 commissioner.

5 SECTION 50. Subchapter H, Chapter 1303, Occupations Code,
6 is amended by adding Sections 1303.355 and 1303.356 to read as
7 follows:

8 Sec. 1303.355. ADMINISTRATIVE PENALTY. (a) The commission
9 may impose an administrative penalty as provided by Subchapter O,
10 Chapter 1101, on a person who violates this chapter or a rule
11 adopted or order issued by the commission under this chapter.

12 (b) The amount of an administrative penalty may not exceed
13 \$5,000 for each violation. Each day a violation continues or occurs
14 may be considered a separate violation for purposes of imposing a
15 penalty.

16 (c) In determining the amount of the penalty, the
17 administrator shall consider:

18 (1) the seriousness of the violation, including the
19 nature, circumstances, extent, and gravity of the violation;

20 (2) the economic harm caused by the violation;

21 (3) the history of previous violations;

22 (4) the amount necessary to deter a future violation;

23 (5) efforts to correct the violation; and

24 (6) any other matter that justice may require.

25 (d) The commission by rule shall adopt a schedule of
26 administrative penalties based on the criteria listed in Subsection
27 (c) for violations subject to an administrative penalty under this

1 section to ensure that the amount of a penalty imposed is
2 appropriate to the violation.

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

8 (b) If the disciplinary panel determines from the
9 information presented to the panel that a person licensed to
10 practice under this chapter would, by the person's continued
11 practice, constitute a continuing threat to the public welfare, the
12 panel shall temporarily suspend the license of that person.

13 (c) A license may be suspended under this section without
14 notice or hearing on the complaint if:

15 (1) institution of proceedings for a hearing before
16 the commission is initiated simultaneously with the temporary
17 suspension; and

18 (2) a hearing is held under Chapter 2001, Government
19 Code, and this chapter as soon as possible.

20 (d) Notwithstanding Chapter 551, Government Code, the
21 disciplinary panel may hold a meeting by telephone conference call
22 if immediate action is required and convening the panel at one
23 location is inconvenient for any member of the panel.

24 SECTION 51. Subchapter C, Chapter 221, Property Code, is
25 amended by adding Section 221.027 to read as follows:

26 Sec. 221.027. TEMPORARY SUSPENSION. (a) The presiding
27 officer of the commission shall appoint a disciplinary panel

1 consisting of three commission members to determine whether the
2 registration for a timeshare plan under this chapter should be
3 temporarily suspended.

4 (b) If the disciplinary panel determines from the
5 information presented to the panel that a timeshare plan registered
6 under this chapter would, by the continued disposition of the
7 timeshare property, constitute a continuing threat to the public
8 welfare, the panel shall temporarily suspend the registration of
9 the timeshare plan.

10 (c) A registration may be suspended under this section
11 without notice or hearing on the complaint if:

12 (1) institution of proceedings for a hearing before
13 the commission is initiated simultaneously with the temporary
14 suspension; and

15 (2) a hearing is held under Chapter 2001, Government
16 Code, and this chapter as soon as possible.

17 (d) Notwithstanding Chapter 551, Government Code, the
18 disciplinary panel may hold a meeting by telephone conference call
19 if immediate action is required and convening the panel at one
20 location is inconvenient for any member of the panel.

21 SECTION 52. The following provisions of the Occupations
22 Code are repealed:

- 23 (1) Section 1101.204(g);
24 (2) Sections 1101.364(c), (d), and (e);
25 (3) Sections 1101.657(b), (c), and (d);
26 (4) Section 1101.703(b);
27 (5) Sections 1102.051(b), (c), and (d);

- 1 (6) Section 1102.052;
- 2 (7) Section 1102.053;
- 3 (8) Section 1102.054;
- 4 (9) Section 1102.055;
- 5 (10) Section 1102.056;
- 6 (11) Section 1102.057;
- 7 (12) Section 1102.058(a);
- 8 (13) Section 1102.059;
- 9 (14) Section 1102.061;
- 10 (15) Section 1102.062; and
- 11 (16) Section 1103.508(c).

12 SECTION 53. (a) Not later than January 1, 2008, the Texas
13 Real Estate Commission shall:

14 (1) adopt the policies required by Sections 1101.159
15 and 1101.160, Occupations Code, as added by this Act; and

16 (2) adopt the rules required by Chapter 1101,
17 Occupations Code, as amended by this Act.

18 (b) As soon as practicable after the effective date of this
19 Act, the commissioner of the Texas Real Estate Commission shall
20 assume the administrative and management duties over the Texas
21 Appraiser Licensing and Certification Board, as required by Section
22 1103.104, Occupations Code, as amended by this Act.

23 SECTION 54. (a) The changes in law made by this Act to
24 Section 1101.053, Occupations Code, regarding the prohibitions on
25 or qualifications of members of the Texas Real Estate Commission do
26 not affect the entitlement of a member serving on the commission
27 immediately before September 1, 2007, to continue to serve and

1 function as a member of the commission for the remainder of the
2 member's term. The changes in law made by that section apply only
3 to a member appointed on or after September 1, 2007.

4 (b) The changes in law made by this Act regarding the
5 filing, investigation, or resolution of a complaint under Chapter
6 1101, Occupations Code, as amended by this Act, apply only to a
7 complaint filed with the Texas Real Estate Commission on or after
8 the effective date of this Act. A complaint filed before the
9 effective date of this Act is governed by the law as it existed
10 immediately before that date, and the former law is continued in
11 effect for that purpose.

12 (c) The change in law made by this Act regarding conduct
13 that is grounds for imposition of a disciplinary sanction,
14 including a refund, temporary license suspension, or cease and
15 desist order, applies only to conduct that occurs on or after the
16 effective date of this Act. Conduct that occurs before the
17 effective date of this Act is governed by the law in effect on the
18 date the conduct occurred, and the former law is continued in effect
19 for that purpose.

20 (d) The changes in law made by this Act regarding the
21 procedure for an administrative penalty apply only to a proceeding
22 commenced on or after the effective date of this Act. A proceeding
23 commenced before the effective date of this Act is governed by the
24 law in effect on the date the proceeding commenced, and the former
25 law is continued in effect for that purpose.

26 (e) The change in law made by this Act regarding the renewal
27 of an expired license applies only to a license that expires on or

1 after the effective date of this Act. A license that expires before
2 the effective date of this Act is governed by the law in effect on
3 the date the license expired, and the former law is continued in
4 effect for that purpose.

5 (f) The change in law made by this Act regarding
6 accreditation standards for educational programs under Chapter
7 1101, Occupations Code, as amended by this Act, applies only to an
8 accreditation granted or renewed on or after September 1, 2009. An
9 educational program renewing an accreditation on or after the
10 effective date of this Act but before September 1, 2009, should
11 strive to meet the new accreditation standards under Chapter 1101,
12 Occupations Code, as amended by this Act, but an accreditation
13 granted or renewed before September 1, 2009, is governed by the law
14 in effect on the date the accreditation expired, and the former law
15 is continued in effect for that purpose.

16 (g) The change in law made by this Act to the authority of
17 the Texas Real Estate Inspector Committee to develop and recommend
18 rules under Chapter 1102, Occupations Code, as amended by this Act,
19 applies only to a rule proposed for adoption on or after the
20 effective date of this Act. A rule proposed for adoption before the
21 effective date of this Act is governed by the law in effect on the
22 date the rule was proposed for adoption, and the former law is
23 continued in effect for that purpose.

24 SECTION 55. This Act takes effect September 1, 2007.