



Texas Real Estate Commission

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S.B. 914 Shapleigh (Truitt, et al.)

Summary

Texas began regulating the real estate profession in 1939, and later created the Texas Real Estate Commission (TREC) in 1949. The agency's mission is to protect consumers engaged in real estate transactions by ensuring that licensees properly represent their client's interests. TREC's main functions include: licensing qualified individuals to act as real estate salespersons, brokers, and home inspectors; setting standards for these professions; and enforcing agency statute and rules by investigating and resolving complaints. TREC also regulates private real estate schools, timeshare developers, and home warranty companies; and provides administrative support to the separate Texas Appraiser Licensing and Certification Board. TREC operates with an annual budget of about \$4.5 million, and a staff of 76. In fiscal year 2006, the agency licensed more than 153,000 individuals and businesses.

Senate Bill 914 continues TREC for 12 years and contains the Sunset Commission's recommendations to increase protections for consumers involved in real estate transactions, and provide prospective real estate school students with information on the quality of schools. The bill transfers TREC's and the Appraiser Board's contested case hearings to the State Office of Administrative Hearings (SOAH), and provides for fairer, more efficient processes for license holders. The list below summarizes the major provisions of S.B. 914, and a more detailed discussion follows.

Sunset Provisions

1. Increase TREC's focus on consumer protection, and provide the agency additional enforcement tools.
2. Improve TREC's ability to quickly resolve complaints, and transfer its hearings to SOAH.
3. Improve regulation of private real estate schools to ensure students get a quality education.
4. Conform key elements of TREC's licensing and regulatory functions to commonly applied licensing practices.
5. Continue the Texas Real Estate Commission for 12 years, and better integrate regulation of home inspectors and appraisers into the agency's structure.

Provisions Added by the Legislature

6. Provide consumers with additional protections if financially harmed by actions of a home inspector.
7. Prevent real estate licensees from completing online continuing education courses in less than one day.

Sunset Provisions

1. Increase TREC's focus on consumer protection, and provide the agency additional enforcement tools.

Senate Bill 914 contains several provisions to strengthen TREC's ability to protect consumers. The bill requires the agency to prioritize investigation of consumer complaints based on risk to consumers, using several criteria, including the degree of potential harm to a consumer and the severity of the violation.

To more appropriately hold licensees accountable for committing violations, S.B. 914 removes the \$1,000 administrative fine limit for practicing without a license, and increases fine authority to a maximum of \$5,000 per day, per violation. The Commission must also adopt a penalty matrix that includes administrative fines and other sanctions against a licensee to ensure consistent and fair enforcement of licensing violations.

Senate Bill 914 allows the Commission to include refunds as part of an agreed order, limited to fees paid for real estate-related services and products regulated by the agency, and not to include damages. The bill also authorizes the Commission to issue final orders against a person who committed a violation while licensed, but whose license expires during the investigation, to avoid re-opening these cases at a later date if the person re-applies for a license.

2. Improve TREC's ability to quickly resolve complaints, and transfer its hearings to SOAH.

The bill streamlines TREC's enforcement function by combining the administrative penalty and contested case process into a single enforcement process, and requiring the agency to align all parts of the process to ensure rapid and fair resolution of cases. To accomplish this, TREC must create an enforcement plan that includes the following:

- ◆ authority to issue notices of violation;
- ◆ requirements for licensees to respond to notices of violations;
- ◆ requirements for the Commission to issue default orders when licensees do not respond to a notice of violation; and
- ◆ authority to hold informal settlement conferences to resolve complaints and negotiate agreed orders.

In addition, the bill transfers TREC's and the Appraiser Board's contested case hearings to the State Office of Administrative Hearings to ensure hearings are carried out efficiently and independently.

3. Improve regulation of private real estate schools to ensure students get a quality education.

The bill requires the Commission to establish a minimum average exam pass rate, above 55 percent, for a school to be re-accredited by the Commission. TREC must publish exam pass rates for individual real estate schools and provide this information to the public by posting this information

on its website. The bill also allows TREC to convene a committee to conduct assessments of low-performing schools, and assist these schools with improving operations or teaching methods.

4. Conform key elements of TREC's licensing and regulatory functions to commonly applied licensing practices.

To bring TREC in line with standard licensing practices, S.B. 914 includes the following provisions.

- ◆ Requires the Commission to base delinquent license renewal fees on the normally required renewal fee.
- ◆ Eliminates licensing and administrative fee caps and authorizes the Commission to set reasonable fees in rule.
- ◆ Authorizes administrative penalties against residential service companies of up to \$5,000 per day, per violation.
- ◆ Authorizes the Commission to issue cease-and-desist orders with regard to practicing without a license.
- ◆ Authorizes temporary suspension of a license when continued practice by a licensee threatens the public.
- ◆ Authorizes the Commission to approve continuing education courses for home inspectors.

5. Continue the Texas Real Estate Commission for 12 years, and better integrate regulation of home inspectors and appraisers into the agency's structure.

Senate Bill 914 continues TREC as a separate, stand-alone agency for the standard 12-year period. The bill aligns the Inspector Committee's role and authority with standards for advisory committees, including authorizing reimbursement for carrying out committee duties. The bill also requires TREC's Administrator to serve as the Appraiser Board's Commissioner, and fully integrates Appraiser Board staff into TREC's management structure while keeping the Appraiser Board as an independent regulatory body to meet federal requirements.

Provisions Added by the Legislature _____

6. Provide consumers with additional protections if financially harmed by actions of a home inspector.

The Legislature added a provision requiring home inspectors to carry minimum liability insurance to help ensure additional recourse for consumers harmed by inspectors committing prohibited acts such as performing a negligent inspection or acting fraudulently.

7. Prevent real estate licensees from completing online continuing education courses in less than one day.

Senate Bill 914 requires an education provider offering an online continuing education course to ensure that the course cannot be completed in less than 24 hours.

Fiscal Implication Summary

Senate Bill 914 contains one provision that will have a positive fiscal impact to the state and one provision that will have no net fiscal impact. Basing late license renewal fees on the cost of renewal, rather than the cost of an original license application, will result in an estimated annual revenue gain of \$129,000, with a one-time cost of \$10,080 in fiscal year 2008 for computer programming changes relating to licensing renewal.

While requiring home inspectors to carry liability insurance will result in some programming costs, and may require one additional employee, the agency can increase inspector licensing fees to recover costs associated with this provision. The revenue gain is shown in the following five-year summary chart.

<i>Fiscal Year</i>	<i>Gain to the General Revenue Fund</i>
2008	\$118,920
2009	\$129,000
2010	\$129,000
2011	\$129,000
2012	\$129,000