Chapter 107

S.B. No. 1516

AN ACT

relating to the registration and regulation of appraisal management
companies; authorizing fees; expanding the applicability of an
occupational registration.

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

SECTION 1. Section 1104.003(b), Occupations Code, is
amended by adding Subdivision (6-a) to read as follows:

(6-a) "Federally regulated appraisal management
company" means an appraisal management company that is:

(A) owned and controlled by an insured depository
institution, as defined by 12 U.S.C. Section 1813; and

(B) regulated by:

(i) the Board of Governors of the Federal
Reserve System;

(ii) the Federal Deposit Insurance
Corporation;

(iii) the Office of the Comptroller of the
Currency; or

(iv) the successors to any of those
agencies.

SECTION 2. Section 1104.004(a), Occupations Code, is
amended to read as follows:

(a) This chapter does not apply to:

(1) a person who exclusively employs appraisers on an
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employer and employee basis for the performance of appraisals;

(2) a person acting as an appraisal firm as defined by
board rule that at all times during a calendar year employs on an
exclusive basis as independent contractors not more than 15
appraisers for the performance of appraisals;

(3) a financial institution, including a department or
unit within the institution, that is regulated by an agency of this
state or the United States government;

(4) subject to Subsection (b), a person who enters
into an agreement with an appraiser for the performance of an
appraisal that on completion results in a report signed by both the
appraiser who completed the appraisal and the appraiser who
requested completion of the appraisal;

(5) an appraisal management company;

(A) operating only in this state with an
appraisal panel of not more than 15 appraisers at all times during a
calendar year; or

(B) operating in multiple states, including this
state, with an appraisal panel of not more than 24 appraisers in all
states at all times during a calendar year; or

(6) an appraisal management company that is a
subsidiary owned and controlled by a financial institution that is
subject to appraisal independence standards at least as stringent
as those under Section 1104.203 or the Truth in Lending Act (15
U.S.C. Section 1601 et seq.) through regulation by an agency of this
state or the United States government; or

(7) subject to Section 1104.052(c), a federally
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SECTION 3. Section 1104.052, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsections (d) and (e) to read as follows:

(b) The board shall collect from each appraisal management company registered under this chapter the national registry fee required by the appraisal subcommittee for each person who is on the appraisal panel of the company and licensed or certified as an appraiser in this state. [The board shall deposit the registry fees to the credit of the appraiser registry account in the general revenue fund.]

(c) Notwithstanding Section 1104.004, the board shall collect from each federally regulated appraisal management company operating in this state:

(1) the national registry fee required by the appraisal subcommittee;

(2) information regarding the determination of the national registry fee as required by the appraisal subcommittee;

(3) a fee in an amount that is sufficient for the administration of this subsection as established by board rule; and

(4) any other information required by state or federal law.

(d) The board shall deposit the national registry fees collected under this section to the credit of the appraiser registry account in the general revenue fund.

(e) The national registry fees collected under this section [Subsection (b)] shall be sent to the appraisal subcommittee
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regularly as required by federal law.

SECTION 4. Section 1104.102(a), Occupations Code, is
amended to read as follows:

(a) A person who has had a license or certificate to act as
an appraiser denied, revoked, or surrendered in lieu of revocation
in any state may not own in any manner [more than one percent of] an
appraisal management company registered or applying for
registration under this chapter unless:

(1) the person has subsequently had the [a] license or
certificate to act as an appraiser granted or reinstated; and

(2) the license or certificate to act as an appraiser
was denied, revoked, or surrendered for a nonsubstantive reason as
determined by the board.

SECTION 5. Sections 1104.103(b) and (c), Occupations Code,
are amended to read as follows:

(b) The application must contain:

(1) the name, business address, and telephone contact
information of the applicant [entity] seeking registration;

(2) if the applicant [entity] is not a corporation
domiciled in this state, the name and contact information for the
applicant's [company's] agent for service of process in this state;

(3) the name, address, and contact information for any
person [individual or any corporation, partnership, or other
business entity] that owns more than 10 percent of the applicant
[appraisal management company];

(4) the name, address, and contact information for at
least one controlling person;
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(5) the designation of a primary contact under Section 1104.104;
(6) the name and contact information of at least one appraiser designated by the applicant [company] to respond to and communicate with appraisers on the applicant's [company's] appraisal panel regarding appraisal assignments;
(7) a certification that the applicant [entity] has a system in place to ensure compliance with Subchapter D and Section 129E of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);
(8) a written irrevocable consent to service of process; and
(9) any other information required by the board to approve the application.

(c) The board shall adopt rules regarding registration and the renewal of a registration under this chapter.

SECTION 6. Section 1104.104(b), Occupations Code, is amended to read as follows:
(b) The controlling person designated under Subsection (a):
   (1) must:
      (A) be certified as an appraiser in at least one state at all times during the designation; or
      (B) have completed:
         (i) the 15-hour national Uniform Standards of Professional Appraisal Practice course; and
         (ii) the seven-hour national Uniform Standards of Professional Appraisal Practice update course not more than two years before the renewal of the appraisal management
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1 company's registration;
2 (2) may not have had a license or certificate to act as
3 an appraiser denied, revoked, or surrendered in lieu of revocation
4 in any state unless:
5 (A) the person has subsequently had the license or certificate to act as an appraiser granted or
6 reinstated; and
7 (B) the license or certificate to act as an appraiser was denied, revoked, or surrendered for a nonsubstantive
8 reason as determined by the board;
9 (3) must be of good moral character, as determined by
10 the board; and
11 (4) shall submit to a background investigation, as
12 determined by the board.

SECTION 7. Section 1104.105, Occupations Code, is amended
15 to read as follows:
16 Sec. 1104.105. DENIAL OF REGISTRATION OR RENEWAL. (a) The
17 board may deny an application for registration or registration
18 renewal:
19 (1) if an applicant fails to satisfy a
20 requirement of this chapter; or
21 (2) on a determination by the board that:
22 (A) there is reasonable evidence that any person
23 who owns an interest in the appraisal
24 management company or any controlling person of the company has,
25 within the 24 months preceding the date of the application, had a
26 license or certification as an appraiser or a registration as an
appraisal management company suspended, revoked, or put on
probation in any state;

(B) the applicant has, while registered under
this chapter, demonstrated incompetency, untrustworthiness, or
conduct or practices that render the registrant unfit to perform
appraisal management services; or

(C) the applicant no longer performs appraisal
management services in good faith and is a source of detriment,
injury, or loss to the public.

(b) The board shall immediately provide written notice to
the applicant of the board's denial of a registration or of a
registration renewal under this chapter.

(c) An appeal of the denial of a registration or of the
renewal of a registration is governed by Chapter 2001, Government
Code.

SECTION 8. Section 1104.151(b), Occupations Code, is
amended to read as follows:

(b) An appraisal management company is not in violation of
Subsection (a) if:

(1) the person whose license or certification was
denied, revoked, or surrendered in lieu of revocation has
subsequently [since that denial, revocation, or surrender] had the
license or certificate granted or reinstated;

(2) the license or certification was denied, revoked,
or surrendered for a nonsubstantive reason as determined by the
board; and

(3) the person maintains the license or certificate in
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1 good standing.

SECTION 9. Section 1104.153, Occupations Code, is amended
to read as follows:

Sec. 1104.153. APPRAISAL REVIEW. A person who performs an
appraisal review for an appraisal management company as required by
Section 1104.155 must be:

(1) licensed as an appraiser [or certified] under
Chapter 1103, unless exempt by board rule; and

(2) qualified to perform the appraisal [with at least
the same certification for the property type as the appraiser who
completed the report] being reviewed.

SECTION 10. Section 1104.156, Occupations Code, is amended
to read as follows:

Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal
management company required to register [registered] under this
chapter or that has applied for registration under this chapter
shall retain for at least five years all business records relating
to each service request that the company receives and the appraiser
who performs the appraisal for the company.

(b) The board may audit the records of an appraisal
management company required to register [registered] under this
chapter to ensure compliance with federal law, this chapter, board
rules, and the Uniform Standards of Professional Appraisal
Practice.

(c) A written record of all substantive communications
between an appraisal management company required to register
[registered] under this chapter and an appraiser relating to
inclusion on an appraisal panel or to an appraisal assignment must be maintained as provided under Subsection (a).

SECTION 11. Section 1104.161(a), Occupations Code, is amended to read as follows:

(a) An appraisal management company may not remove an appraiser from its panel, or otherwise refuse to assign requests for appraisal services to an appraiser without:

(1) notifying the appraiser in writing of the reasons for removal from the company's panel;

(2) if the appraiser is being removed from the panel for illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, notifying the appraiser of the nature of the alleged conduct or violation; and

(3) providing an opportunity for the appraiser to respond in writing to the notification.

SECTION 12. Section 1104.201, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board may report to the appraisal subcommittee any disciplinary action taken by the board against an appraisal management company required to register under this chapter.

SECTION 13. Section 1104.202, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding any other law, an administrative penalty collected under this section must be deposited in a
restricted fund maintained and operated by the board to develop educational programs for appraisers or to conduct studies that enhance consumer protection.

SECTION 14. Section 1104.203, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For purposes of Subsection (a), a fee paid by an appraisal management company to an appraiser for appraisal services is not a financial benefit.

SECTION 15. Section 1104.204(b), Occupations Code, is amended to read as follows:

(b) The board, on its own motion, may file a complaint against:

(1) an appraisal management company registered under this chapter;

(2) a controlling person; or

(3) a person who engages in an activity for which registration is required under this chapter without being registered.

SECTION 16. Section 1104.205, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) An investigation of an alleged violation by a person registered under this chapter may not be terminated solely on the basis that the person fails to renew the registration.

SECTION 17. Section 1104.208(a), Occupations Code, is amended to read as follows:

(a) Based on the report submitted under Section 1104.207, the board may:
(1) order further investigation of the complaint;
(2) permit the person who is the subject of the complaint to participate in a voluntary discussion of the facts and circumstances of the alleged violation;
(3) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or
(4) determine that there is probable cause to believe that a violation occurred and enter into an agreed order with the respondent under Section 1104.2081 or proceed as the complainant with a contested case hearing under Chapter 2001, Government Code.

SECTION 18. Subchapter E, Chapter 1104, Occupations Code, is amended by adding Sections 1104.2081 and 1104.2082 to read as follows:

Sec. 1104.2081. AGREED ORDER. (a) The board may negotiate a settlement and enter into an agreed order with an appraisal management company or other person who is the subject of a complaint under this subchapter.

(b) An agreed order must be:

(1) approved by the board; and
(2) signed by the commissioner and the appraisal management company or other person who is the subject of the complaint.

(c) A board member who participates in negotiating an agreed order under this section is disqualified from participating in the adjudication of a contested case that results from the negotiation.

(d) An appraisal management company or other person who
consents to negotiate under this section waives the right to notice
and the opportunity to be heard under Chapter 2001, Government
Code, during the negotiation.

(e) An appraisal management company or other person who
enters into an agreed order under this section may be disciplined
for failure to comply with the agreed order.

Sec. 1104.2082. CONFIDENTIALITY OF INVESTIGATION MATERIAL.
(a) Information or material, including any investigation file, is
confidential and not subject to disclosure under Chapter 552,
Government Code, or any other means of legal compulsion for
release, including disclosure, discovery, or subpoena, if the
information or material is prepared or compiled by the board in
connection with a complaint, investigation, or audit of any person
subject to the jurisdiction of the board.

(b) Notwithstanding Subsection (a), information or material
prepared or compiled by the board in connection with a complaint,
investigation, or audit may be disclosed:

(1) to the respondent;

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

(3) to an entity in another jurisdiction that
licenses, registers, credentials, or disciplines any person
subject to the jurisdiction of the board;
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(4) to a law enforcement agency;

(5) to the State Office of Administrative Hearings; or

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

(c) The release of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

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

(e) The board may withhold information or material described by Subsection (a) without requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

(f) Notwithstanding Subsection (a), on the dismissal or final resolution of a complaint, investigation, or audit, information or material prepared or compiled by the board in connection with the complaint, investigation, or audit, including a completed audit report or a final order of the board, is subject to disclosure under Chapter 321 or 552, Government Code.

SECTION 19. The heading to Section 1104.210, Occupations Code, is amended to read as follows:

Sec. 1104.210. PENALTY TO BE PAID [OR HEARING REQUESTED].

SECTION 20. Section 1104.212, Occupations Code, is amended to read as follows:

Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th
day before the [hearing] date of a contested case hearing
[involving an appraisal management company], the board shall
personally deliver or send by certified mail [to the company]
otice of the hearing to the parties to the hearing.

SECTION 21. Subchapter E, Chapter 1104, Occupations Code,
is amended by adding Sections 1104.2121, 1104.2122, 1104.2131, and
1104.2132 to read as follows:

Sec. 1104.2121. ATTORNEY GENERAL REPRESENTATION. The
attorney general may not represent the board in a contested case
before the State Office of Administrative Hearings.

Sec. 1104.2122. IMMUNITY OF WITNESSES. (a) The board in a
contested case hearing may grant a witness immunity from
disciplinary action by the board.

(b) The official record of the hearing must include the
reason for granting immunity.

Sec. 1104.2131. RECORD OF PROCEEDINGS. (a) Contested case
proceedings shall be recorded by:

(1) mechanical or electrical means; or

(2) a certified shorthand reporter.

(b) At the request of a party, the proceedings or any part of
the proceedings shall be transcribed. The expense of the
transcription shall be charged to the requesting party.

(c) The recording, stenographic notes, or transcription of
oral proceedings shall be maintained by the board until at least the
fifth anniversary of the date of the decision in the contested case.

Sec. 1104.2132. FAILURE TO APPEAR; COSTS. (a) If a
respondent receives proper notice of a contested case hearing but
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1 does not appear in person at the hearing, the administrative law
2 judge may conduct the hearing or enter an order, as the
3 administrative law judge determines appropriate.
4
5 (b) The respondent is bound by the results of the hearing to
6 the same extent as if the respondent had appeared.
7
8 (c) The administrative law judge may award reasonable costs
9 to the board on a request for and proof of costs incurred if the
10 respondent fails to appear at the hearing. In this subsection, the
11 term "costs" means all costs associated with the hearing, including
12 the costs charged by the State Office of Administrative Hearings
13 and any costs related to hearing preparation, discovery,
14 depositions, subpoenas, service of process, witness expenses,
15 travel expenses, and investigation expenses.

SECTION 22. Section 1104.214, Occupations Code, is amended
16 to read as follows:
17
18 Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a
19 contested case hearing under this subchapter, the administrative
20 law judge shall:
21
22 (1) make findings of fact and conclusions of law; and
23 (2) issue to the board a proposal for decision that the
24 board [shall] take one or more of the following actions:
25
26 (A) dismiss the charges;
27 (B) revoke the appraisal management company's
28 registration;
29 (C) suspend the registration of the appraisal
30 management company for a period of not more than five years;
31 (D) impose a period of probation, with or without
conditions;

(E) issue a public or private reprimand or a warning;

(F) impose an administrative penalty; or

(G) require the payment of costs expended by the board associated with the contested case, including:

(i) attorney's [legal] fees;

(ii) the costs charged by the State Office of Administrative Hearings; and

(iii) any administrative costs associated with the hearing, including witness expenses, travel expenses, and investigation expenses.

SECTION 23. Section 1104.215, Occupations Code, is amended to read as follows:

Sec. 1104.215. DECISION BY BOARD. (a) Based on the findings of fact and conclusions of law and proposal for decision of the administrative law judge [the recommendations of the hearings examiner], the board by order may determine that:

(1) a violation has occurred and may impose an administrative penalty or another sanction; or

(2) a violation did not occur.

(b) The board shall give notice of the order to the person who is the subject of the order. The notice must include:

(1) [separate statements of] the findings of fact and conclusions of law separately stated;

(2) the amount of any penalty imposed or a description of any sanction imposed; [and]
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(3) a statement of the right of the person to judicial review of the order; and

(4) any other information required by law.

SECTION 24. Section 1104.216, Occupations Code, is amended to read as follows:

Sec. 1104.216. MOTION [APPLICATION] FOR REHEARING. (a) A party may file a motion for rehearing with the board [for a rehearing]. The motion [application] must state:

(1) the specific grounds for rehearing; and

(2) the relief sought.

(b) A motion for rehearing filed under this section is governed by Chapter 2001, Government Code [The application is denied if the board does not grant it before the 120th day after the date the commissioner is served with the application].

SECTION 25. Sections 1104.102(b) and (d), Occupations Code, are repealed.

SECTION 26. As soon as practicable after the effective date of this Act, the Texas Appraiser Licensing and Certification Board shall adopt rules and fees necessary to implement Chapter 1104, Occupations Code, as amended by this Act.

SECTION 27. The changes in law made by this Act relating to the eligibility for a registration under Chapter 1104, Occupations Code, or to the requirements for an application under that chapter apply only to an application submitted to the Texas Appraiser Licensing and Certification Board on or after the effective date of
this Act. An application submitted before that date is governed by
the law in effect on the date the application was submitted, and the
former law is continued in effect for that purpose.

SECTION 28. The changes in law made by this Act relating to
the requirements for renewal of a registration under Chapter 1104,
Occupations Code, apply only to an application for renewal of a
registration that expires on or after the effective date of this
Act. A registration that expires before that date is governed by
the law in effect immediately before the effective date of this Act,
and the former law is continued in effect for that purpose.

SECTION 29. The changes in law made by this Act apply only
to a disciplinary proceeding or a contested case hearing under
Chapter 1104, Occupations Code, for conduct that occurs on or after
the effective date of this Act. Conduct that occurs before the
effective date of this Act is governed by the law in effect on the
date the conduct occurred, and the former law is continued in effect
for that purpose.

SECTION 30. This Act takes effect September 1, 2017.
I hereby certify that S.B. No. 1516 passed the Senate on April 26, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 16, 2017, by the following vote: Yeas 30, Nays 0.

I hereby certify that S.B. No. 1516 passed the House, with amendment, on May 11, 2017, by the following vote: Yeas 130, Nays 13, one present not voting.

Approved:

5-23-2017

Date

Greg Abbott
Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
5:00 O'CLOCK
MAY 23 2017
Secretary of State
TO: Honorable John Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1516 by Hancock (Relating to the registration and regulation of appraisal management companies; authorizing fees; expanding the applicability of an occupational registration.), Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Occupations Code relating to the registration and regulation of appraisal management companies; authorizing fees; expanding the applicability of an occupational registration.

The bill would require the Texas Appraiser Licensing and Certification Board (TALCB) to collect from federally regulated appraisal companies the national registry fee required by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council, any information regarding the determination of the fee or required by state or federal law, and a fee in an amount sufficient to cover the administration of these provisions. According to the Comptroller of Public Accounts (CPA), the national registry fee would be deposited in TALCB’s account outside the treasury and sent to the ASC as required by federal law.

The bill would require that TALCB deposit any disciplinary penalties it collects in a restricted fund for the purpose of developing educational programs for appraisers or conducting studies that enhance consumer protection.

TALCB is an independent subdivision of the Texas Real Estate Commission, a self-directed, semi-independent agency; therefore, any costs, savings, or changes in revenue associated with its implementation of the provisions of the bill are not considered in this analysis. Based on the analysis of the State Office of Administrative Hearings and the Office of the Attorney General, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.
Local Government Impact

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 329 Real Estate Commission, 360 State Office of Administrative Hearings

**LBB Staff:** UP, AO, CL, EH, EK
TO: Honorable John Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1516 by Hancock (Relating to the registration and regulation of appraisal management companies; authorizing fees; expanding the applicability of an occupational registration.), As Engrossed

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Source Agencies: 304 Comptroller of Public Accounts, 329 Real Estate Commission, 360 State Office of Administrative Hearings

LBB Staff: UP, CL, EH, AO, EK
TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1516 by Hancock (Relating to the registration and regulation of appraisal management companies; authorizing fees; expanding the applicability of an occupational registration.), As Introduced

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**LBB Staff:** UP, CL, EH, AO, EK