

By: Kuempel

H.B. No. 1146

A BILL TO BE ENTITLED

AN ACT

relating to the registration and regulation of appraisal management companies; providing administrative penalties.

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

SECTION 1. Subtitle A, Title 7, Occupations Code, is amended by adding Chapter 1104 to read as follows:

CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1104.001. SHORT TITLE. This chapter may be cited as the Texas Appraisal Management Company Registration and Regulation Act.

Sec. 1104.002. DEFINITIONS. In this chapter:

(1) "Appraisal" means:

(A) an estimate of value; or

(B) the act or process of estimating value.

(2) "Appraisal Foundation" means the Appraisal Foundation, as defined by 12 U.S.C. Section 3350, or its successor.

(3) "Appraisal management company" means an external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets that directly or indirectly performs appraisal management services in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in a securitization.

1 (4) "Appraisal management service" means to directly
2 or indirectly:

3 (A) administer an appraisal panel;

4 (B) recruit, retain, or select an appraiser;

5 (C) contract with an appraiser to perform an
6 appraisal assignment;

7 (D) provide a completed appraisal performed by an
8 appraiser to one or more clients; or

9 (E) manage the process of having an appraisal
10 performed, including:

11 (i) receiving and assigning appraisal
12 orders and reports;

13 (ii) tracking and determining the status of
14 orders for appraisals;

15 (iii) conducting quality control of a
16 completed appraisal before delivery of the appraisal to the person
17 who ordered the appraisal;

18 (iv) collecting fees from creditors and
19 underwriters for services provided; or

20 (v) reimbursing appraisers for services
21 performed.

22 (5) "Appraisal panel" means a pool of licensed or
23 certified appraisers who perform appraisals for an appraisal
24 management company as independent contractors.

25 (6) "Appraisal Standards Board" means the Appraisal
26 Standards Board of the Appraisal Foundation, or its successor.

27 (7) "Appraisal subcommittee" means the Appraisal

1 Subcommittee of the Federal Financial Institutions Examination
2 Council, or its successor.

3 (8) "Appraiser" means a person licensed or certified
4 under Chapter 1103.

5 (9) "Board" means the Texas Appraiser Licensing and
6 Certification Board.

7 (10) "Controlling person" means:

8 (A) an owner, officer, or director of an
9 appraisal management company;

10 (B) an individual employed, appointed, or
11 authorized by an appraisal management company that has the
12 authority to enter into a contractual relationship with other
13 persons for the performance of appraisal management services and
14 the authority to enter into agreements with appraisers for the
15 performance of appraisals; or

16 (C) an individual who possesses, directly or
17 indirectly, the power to direct or cause the direction of the
18 management or policies of an appraisal management company.

19 (11) "Federal financial institution regulatory
20 agency" means:

21 (A) the Board of Governors of the Federal Reserve
22 System;

23 (B) the Federal Deposit Insurance Corporation;

24 (C) the Office of the Comptroller of the
25 Currency;

26 (D) the Office of Thrift Supervision;

27 (E) the National Credit Union Administration; or

1 (F) the successors of any of those agencies.

2 (12) "Uniform Standards of Professional Appraisal
3 Practice" means the Uniform Standards of Professional Appraisal
4 Practice adopted by the Appraisal Standards Board of the Appraisal
5 Foundation.

6 Sec. 1104.003. EXEMPTIONS. (a) This chapter does not apply
7 to:

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

10 (2) a department or unit within a financial
11 institution that:

12 (A) is subject to direct regulation by an agency
13 of this state or the United States government; and

14 (B) receives a request for the performance of an
15 appraisal from one employee of the financial institution and
16 another employee of the same financial institution assigns the
17 appraisal request to an appraiser who is an independent contractor
18 to the institution;

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

24 (4) an appraisal management company with an appraisal
25 panel of not more than 15 appraisers; or

26 (5) an appraisal management company that is a
27 subsidiary owned and controlled by a financial institution that is

1 regulated by a federal financial institution regulatory agency.

2 (b) An appraisal management company may not require an
3 employee of the appraisal management company who is an appraiser to
4 sign an appraisal that is completed by another appraiser who
5 contracts with the appraisal management company in order to avoid
6 the requirements of this chapter.

7 [Sections 1104.004-1104.050 reserved for expansion]

8 SUBCHAPTER B. BOARD POWERS AND DUTIES

9 Sec. 1104.051. RULES. The board may adopt rules necessary
10 to administer this chapter.

11 Sec. 1104.052. FEES. (a) Subject to Subsection (b), the
12 board by rule shall establish an application fee in an amount so
13 that the sum of the fees paid by all appraisal management companies
14 seeking registration under this chapter are sufficient for the
15 administration of this chapter.

16 (b) The application fee established under this section may
17 not exceed \$2,500.

18 (c) The board shall collect annually from each appraisal
19 management company registered under this chapter the amount
20 determined by the appraisal subcommittee to be a national registry
21 fee for each person on the appraisal panel of the company. The board
22 shall deposit the registry fees to the credit of the appraiser
23 registry account in the general revenue fund.

24 (d) The fees collected under Subsection (c) shall be sent to
25 the appraisal subcommittee regularly as required by federal law.

26 [Sections 1104.053-1104.100 reserved for expansion]

1 SUBCHAPTER C. REGISTRATION REQUIREMENTS

2 Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is
3 registered under this chapter, a person may not:

- 4 (1) act as an appraisal management company;
5 (2) provide appraisal management services; or
6 (3) advertise or represent the person as an appraisal
7 management company.

8 Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP.

9 (a) An appraisal management company applying for registration
10 under this chapter may not be directly or indirectly owned, wholly
11 or partly, by:

12 (1) a person who has had a license or certificate to
13 act as an appraiser denied, revoked, or surrendered in lieu of
14 revocation in any state; or

15 (2) another entity more than 10 percent of which is
16 owned by any person who has had a license or certificate to act as an
17 appraiser denied, revoked, or surrendered in lieu of revocation in
18 any state.

19 (b) A person owning more than 10 percent of an appraisal
20 management company in this state must:

21 (1) be of good moral character, as determined by the
22 board; and

23 (2) submit to a background investigation, as
24 determined by the board.

25 (c) An appraisal management company applying for
26 registration under this chapter shall certify to the board that:

- 27 (1) it has reviewed each entity that owns more than 10

1 percent of the company; and

2 (2) no entity reviewed under Subdivision (1) is more
3 than 10 percent owned by a person who has had a license or
4 certificate to act as an appraiser denied, revoked, or surrendered
5 in lieu of revocation.

6 Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL.

7 (a) An applicant for registration or registration renewal under
8 this chapter must submit:

9 (1) an application on a form prescribed and provided
10 by the board; and

11 (2) the fee established under Section 1104.052(a).

12 (b) The application must contain:

13 (1) the name, business address, and telephone contact
14 information of the entity seeking registration;

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

18 (3) the name, address, and contact information for any
19 individual or any corporation, partnership, or other business
20 entity that owns more than 10 percent of the appraisal management
21 company;

22 (4) the name, address, and contact information for at
23 least one controlling person;

24 (5) the designation of a primary contact under Section
25 1104.104;

26 (6) a certification that the entity has a system in
27 place to ensure compliance with Sections 1104.152, 1104.156, and

1 1104.157;

2 (7) a written irrevocable consent to service of
3 process; and

4 (8) any other information required by the board.

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

7 Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An
8 appraisal management company applying for registration under this
9 chapter shall designate one controlling person as the primary
10 contact for all communication between the board and the company.

11 (b) The controlling person designated under Subsection (a):

12 (1) may not have had a license or certificate to act as
13 an appraiser denied, revoked, or surrendered in lieu of revocation
14 in any state;

15 (2) must be of good moral character, as determined by
16 the board; and

17 (3) shall submit to a background investigation, as
18 determined by the board.

19 Sec. 1104.105. DENIAL OF REGISTRATION. (a) The board may
20 deny a registration:

21 (1) to an applicant who fails to satisfy a requirement
22 of this chapter; or

23 (2) on a determination by the board that:

24 (A) there is probable cause to believe that any
25 person who owns more than five percent of the appraisal management
26 company or any controlling person of the company has, within the 12
27 months preceding the date of the application, violated a provision

1 of this chapter to which a registrant would be subject;

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

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

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

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

14 Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION
15 NUMBER. The board shall:

16 (1) issue a unique registration number to each
17 appraisal management company registered under this chapter; and

18 (2) publish annually a list of the companies
19 registered under this chapter and the registration number of each
20 company.

21 Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed,
22 a registration issued under this chapter expires on the first
23 anniversary of the date the registration is issued.

24 [Sections 1104.108-1104.150 reserved for expansion]

25 SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY

26 Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED.

27 An appraisal management company registered under this chapter may

1 not knowingly:

2 (1) employ a person in a position in which the person
3 has the responsibility to order appraisals or to review completed
4 appraisals if the person has had a license or certificate to act as
5 an appraiser denied, revoked, or surrendered in lieu of revocation
6 in any state;

7 (2) enter into any independent contractor arrangement
8 with any person who has had a license or certificate to act as an
9 appraiser denied, revoked, or surrendered in lieu of revocation in
10 any state; or

11 (3) enter into any contract, agreement, or other
12 business relationship with any entity that employs, has entered
13 into an independent contract arrangement, or has entered into any
14 contract, agreement, or other business relationship with any person
15 who has ever had a license or certificate to act as an appraiser
16 denied, revoked, or surrendered in lieu of revocation in any state.

17 Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION.
18 An appraisal management company registered under this chapter must
19 verify that an individual to whom the company is making an
20 assignment for the completion of an appraisal:

21 (1) is licensed or certified under Chapter 1103; and
22 (2) has not had a license or certificate as an
23 appraiser denied, revoked, or surrendered in lieu of revocation
24 since the last time the company made an assignment for an appraisal
25 to the appraiser.

26 Sec. 1104.153. APPRAISAL REVIEW. A person who performs an
27 appraisal review for an appraisal management company must be

1 licensed or certified under Chapter 1103.

2 Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an
3 assignment to an appraiser, an appraisal management company must
4 verify that the appraiser receiving the assignment satisfies each
5 provision of the competency rule of the Uniform Standards of
6 Professional Appraisal Practice for the appraisal being assigned.

7 Sec. 1104.155. COMPLIANCE WITH FEDERAL LAW. An appraisal
8 management company registered under this chapter shall ensure that
9 appraisals are conducted independently and free from inappropriate
10 influence and coercion as required by the appraisal independence
11 standards established under the Truth in Lending Act (15 U.S.C.
12 Section 1601 et seq.).

13 Sec. 1104.156. PROFESSIONAL STANDARDS. An appraisal
14 management company registered under this chapter shall review on a
15 periodic basis the work of all appraisers performing appraisal
16 services for the company to ensure that the services comply with:

17 (1) the most current edition of the Uniform Standards
18 of Professional Appraisal Practice; or

19 (2) other standards prescribed by board rule that are
20 at least as stringent as the Uniform Standards of Professional
21 Appraisal Practice.

22 Sec. 1104.157. BUSINESS RECORDS. An appraisal management
23 company registered under this chapter or that has applied for
24 registration under this chapter shall retain all business records
25 relating to each service request that the company receives and the
26 appraiser who performs the appraisal for the company.

27 Sec. 1104.158. COMPENSATION OF APPRAISERS. An appraisal

1 management company shall:

2 (1) except in cases of breach of contract or
3 substandard performance of services, pay an appraiser for the
4 completion of an appraisal or valuation assignment not later than
5 the 60th day after the date the appraiser provides the completed
6 appraisal or valuation assignment to the company or its assignee;
7 and

8 (2) compensate appraisers at a rate that is reasonable
9 and customary for appraisals being performed in the market area of
10 the property being appraised without the services of an appraisal
11 management company.

12 Sec. 1104.159. STATEMENT OF FEES. (a) An appraisal
13 management company shall separately state the fees:

14 (1) paid to an appraiser for the completion of an
15 appraisal; and

16 (2) charged by the company for appraisal management
17 services.

18 (b) An appraisal management company may not:

19 (1) prohibit an appraiser from recording the fee that
20 the appraiser was paid by the company for the performance of the
21 appraisal in the appraisal report that is submitted by the
22 appraiser to the company; or

23 (2) include any fees for appraisal management services
24 performed by the company in the amount the company charges for the
25 actual completion of an appraisal by an appraiser.

26 Sec. 1104.160. ADVERTISING. An appraisal management
27 company registered under this chapter shall disclose the company's

1 registration number on all print and electronic advertising,
2 including any electronic advertising or communication conducted on
3 the Internet.

4 Sec. 1104.161. MANDATORY REPORTING. An appraisal
5 management company that has a reasonable basis to believe an
6 appraiser is failing to comply with the Uniform Standards of
7 Professional Appraisal Practice, violating applicable laws, or
8 otherwise engaging in unethical or unprofessional conduct shall
9 refer the matter to the board.

10 Sec. 1104.162. REMOVAL OF APPRAISER FROM APPRAISAL PANEL.

11 (a) Other than during the first 30 days after the date an appraiser
12 is first added to the appraisal panel of an appraisal management
13 company, a company may not remove an appraiser from its panel, or
14 otherwise refuse to assign requests for appraisal services to an
15 appraiser without:

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

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

23 (3) providing an opportunity for the appraiser to
24 respond to the notification.

25 (b) An appraiser who is removed from the appraisal panel of
26 an appraisal management company for alleged illegal conduct, a
27 violation of the Uniform Standards of Professional Appraisal

1 Practice, or a violation of this chapter, may file a complaint with
2 the board for a review of the decision of the company.

3 (c) In a review under Subsection (b), the board may not make
4 any determination regarding the nature of the business relationship
5 between the appraiser and the appraisal management company that is
6 unrelated to the grounds for the removal.

7 (d) The board shall hear and resolve a complaint filed under
8 Subsection (b) not later than the 180th day after the date the
9 complaint is filed with the board.

10 (e) If after opportunity for hearing and review, the board
11 determines that an appraiser did not commit the alleged violation,
12 the board shall order that the appraiser be returned to the
13 appraisal panel of the appraisal management company. The appraisal
14 management company may not refuse to make assignments for appraisal
15 services or otherwise penalize the appraiser after returning the
16 appraiser to the company's appraisal panel.

17 [Sections 1104.163-1104.200 reserved for expansion]

18 SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES

19 Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. The board may
20 censure an appraisal management company or conditionally or
21 unconditionally suspend or revoke any registration issued under
22 this chapter if the board determines that the appraisal management
23 company has:

24 (1) violated or attempted to violate this chapter or
25 any rule adopted by the board under this chapter; or

26 (2) procured or attempted to procure a license or
27 registration by fraud, misrepresentation, or deceit.

1 Sec. 1104.202. PROHIBITED PRACTICES. (a) An appraisal
2 management company or an employee, director, officer, or agent of
3 an appraisal management company may not:

4 (1) cause or attempt to cause the appraised value of a
5 property assigned under an appraisal to be based on any factor other
6 than the independent judgment of the appraiser;

7 (2) cause or attempt to cause the mischaracterization
8 of the appraised value of a property in conjunction with a consumer
9 credit transaction;

10 (3) seek to influence an appraiser or otherwise to
11 encourage a targeted value in order to facilitate the making or
12 pricing of a consumer credit transaction;

13 (4) alter, modify, or otherwise change a completed
14 appraisal report submitted by an appraiser by:

15 (A) permanently removing the appraiser's
16 signature or seal; or

17 (B) adding information to or removing
18 information from the appraisal report with an intent to change the
19 valuation conclusion;

20 (5) condition the request for an appraisal or the
21 payment of an appraisal fee, salary, or bonus on the opinion,
22 conclusion, or valuation to be reached, or on a preliminary
23 estimate or opinion requested from an appraiser;

24 (6) request that an appraiser provide an estimated,
25 predetermined, or desired valuation in an appraisal report, or
26 provide estimated values or comparable sales at any time before the
27 appraiser's completion of an appraisal;

1 (7) provide to an appraiser an anticipated, estimated,
2 encouraged, or desired value for a subject property or a proposed or
3 target amount to be loaned to the borrower, except that a copy of
4 the sales contract for a purchase transaction may be provided;

5 (8) make any part of the appraiser's fee or the
6 appraisal management company's fee contingent on a favorable
7 outcome, including:

8 (A) a loan closing; or

9 (B) a specific valuation being achieved by the
10 appraiser in the appraisal report;

11 (9) withhold or threaten to withhold timely payment
12 for an appraisal report or appraisal services rendered when the
13 appraisal report or services are provided in accordance with the
14 contract between the parties;

15 (10) withhold or threaten to withhold future business
16 from an appraiser;

17 (11) demote or terminate or threaten to demote or
18 terminate an appraiser;

19 (12) expressly or impliedly promise future business,
20 promotions, or increased compensation for an appraiser;

21 (13) provide to an appraiser, or any person related to
22 the appraiser, stock or other financial or nonfinancial benefits;

23 (14) allow the removal of an appraiser from an
24 appraisal panel, without prior written notice to the appraiser;

25 (15) obtain, use, or pay for a second or subsequent
26 appraisal or order an automated valuation model in connection with
27 a mortgage financing transaction unless:

1 (A) there is a reasonable basis to believe that
2 the initial appraisal was flawed or tainted and that basis is
3 clearly and appropriately noted in the loan file; or

4 (B) the subsequent appraisal or automated
5 valuation model is done under a bona fide pre-funding or
6 post-funding appraisal review or quality control process;

7 (16) prohibit or inhibit communication between the
8 appraiser and:

9 (A) the lender;

10 (B) a real estate license holder; or

11 (C) any other person from whom the appraiser, in
12 the appraiser's own professional judgment, believes information
13 would be relevant;

14 (17) request, for the purpose of facilitating a
15 mortgage loan transaction:

16 (A) a broker price opinion; or

17 (B) any other real property price or value
18 estimation that does not qualify as an appraisal; or

19 (18) require an appraiser to:

20 (A) prepare an appraisal report if the appraiser,
21 in the appraiser's own professional judgment, believes the
22 appraiser does not have the necessary expertise for the specific
23 geographic area;

24 (B) prepare an appraisal report under a schedule
25 that the appraiser, in the appraiser's own professional judgment,
26 believes does not afford the appraiser the ability to meet all the
27 relevant legal and professional obligations;

1 (C) provide the appraisal management company
2 with the appraiser's digital signature or seal;

3 (D) modify any aspect of an appraisal report;

4 (E) engage in any act or practice that does not
5 comply with:

6 (i) the Uniform Standards of Professional
7 Appraisal Practice; or

8 (ii) any assignment conditions and
9 certifications required by the client; or

10 (F) engage in any other act or practice that
11 impairs or attempts to impair an appraiser's independence,
12 objectivity, or impartiality.

13 (b) Subsection (a) may not be construed as prohibiting:

14 (1) an appraiser from voluntarily providing the
15 appraiser's digital signature to another person; or

16 (2) an appraisal management company from asking an
17 appraiser to:

18 (A) consider additional appropriate property
19 information, including the consideration of additional comparable
20 properties to make or support an appraisal;

21 (B) provide further detail, substantiation, or
22 explanation for the appraiser's value conclusion; or

23 (C) correct errors in the appraisal report.

24 Sec. 1104.203. COMPLAINT. (a) Any person, including a
25 member of the board, may file with the board a written complaint on
26 a form prescribed by the board.

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

1 against an appraisal management company registered under this
2 chapter.

3 Sec. 1104.204. REVIEW AND INVESTIGATION. (a) On receipt
4 of a complaint or on its own motion, the board shall review and
5 investigate an alleged act or omission that the board believes is a
6 ground for disciplinary action.

7 (b) An investigator designated by the presiding officer of
8 the board shall investigate each allegation in a complaint to
9 determine whether probable cause exists for a hearing on the
10 complaint.

11 (c) If the board determines that a complaint does not
12 present facts that are grounds for disciplinary action, the board
13 or the commissioner shall dismiss the complaint and may not take
14 further action.

15 Sec. 1104.205. GENERAL SUBPOENA AUTHORITY. (a) The board
16 may request and, if necessary, compel by subpoena:

17 (1) the attendance of witnesses for examination under
18 oath; and

19 (2) the production of records, documents, and other
20 evidence relevant to the investigation of an alleged violation of
21 this chapter for inspection and copying.

22 (b) The board may also issue a subpoena for purposes of an
23 investigation of a complaint to determine whether the board should
24 institute a contested case proceeding.

25 (c) If a person does not comply with a subpoena, the board,
26 acting through the attorney general, may file suit to enforce the
27 subpoena in a district court in Travis County or in the county in

1 which a hearing conducted by the board may be held.

2 (d) The court shall order compliance with the subpoena if
3 the court finds that good cause exists for the issuance of the
4 subpoena.

5 Sec. 1104.206. REPORT OF INVESTIGATION REQUIRED. (a) At
6 the conclusion of the investigation of a complaint, the
7 investigator shall submit to the board a written report to enable
8 the board to determine what further action is necessary.

9 (b) The report must contain:

10 (1) statements of fact;

11 (2) the recommendations of the investigator; and

12 (3) the position or defense of the investigated
13 appraisal management company.

14 Sec. 1104.207. ACTION BASED ON REPORT. Based on the report
15 submitted under Section 1104.206, the board may:

16 (1) order further investigation of the complaint;

17 (2) determine that there is not probable cause to
18 believe that a violation occurred and dismiss the case; or

19 (3) determine that there is probable cause to believe
20 that a violation occurred and proceed as the complainant with a
21 contested case hearing under Chapter 2001, Government Code.

22 Sec. 1104.208. NOTICE OF HEARING. Not later than the 30th
23 day before the hearing date of a contested case involving an
24 appraisal management company, the board shall personally deliver or
25 send by certified mail to the company notice of the hearing.

26 Sec. 1104.209. APPLICABILITY OF ADMINISTRATIVE PROCEDURE
27 LAW. Except as otherwise provided by this chapter, a proceeding

1 under this subchapter is subject to Chapter 2001, Government Code.

2 Sec. 1104.210. ACTION AFTER HEARING. On conclusion of a
3 contested case hearing under this subchapter, the administrative
4 law judge shall:

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

6 (2) issue to the board a proposal for decision that the
7 board shall take one or more of the following actions:

8 (A) dismiss the charges, including issuing an
9 order declaring that the case file is confidential;

10 (B) revoke the appraisal management company's
11 registration;

12 (C) suspend the registration of the appraisal
13 management company for a period of not more than five years;

14 (D) impose a period of probation, with or without
15 conditions;

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

18 (F) require the payment of costs expended by the
19 board associated with the contested case, including legal fees and
20 administrative costs.

21 [Sections 1104.211-1104.250 reserved for expansion]

22 SUBCHAPTER F. ADMINISTRATIVE PENALTY

23 Sec. 1104.251. IMPOSITION OF PENALTY. The board may impose
24 an administrative penalty against a person who violates this
25 chapter or a rule adopted under this chapter.

26 Sec. 1104.252. AMOUNT OF PENALTY. (a) The amount of the
27 administrative penalty may not exceed \$25,000 for each violation.

1 Each day of a continuing violation is a separate violation.

2 (b) The amount of the penalty shall be based on:

3 (1) the seriousness of the violation;

4 (2) the history of previous violations;

5 (3) the amount necessary to deter a future violation;

6 (4) efforts made to correct the violation; and

7 (5) any other matter that justice may require.

8 Sec. 1104.253. NOTICE OF VIOLATION AND PENALTY. (a) If,
9 after investigating a possible violation and the facts surrounding
10 that possible violation, the board determines that a violation
11 occurred, the board shall give written notice of the violation to
12 the person alleged to have committed the violation.

13 (b) The notice must:

14 (1) include a brief summary of the alleged violation;

15 (2) state the amount of the proposed administrative
16 penalty; and

17 (3) inform the person of the person's right to a
18 hearing on the occurrence of the violation, the amount of the
19 penalty, or both.

20 Sec. 1104.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
21 Not later than the 30th day after the date the person receives the
22 notice, the person may:

23 (1) accept the board's determination, including the
24 proposed administrative penalty; or

25 (2) make a written request for a hearing on that
26 determination.

27 (b) If the person accepts the board's determination, the

1 board by order shall approve the determination and impose the
2 proposed penalty.

3 Sec. 1104.255. HEARING. (a) If the person timely requests
4 a hearing, the board shall:

5 (1) set a hearing;

6 (2) give written notice of the hearing to the person;

7 and

8 (3) designate a hearings examiner to conduct the
9 hearing.

10 (b) The hearings examiner shall make findings of fact and
11 conclusions of law and promptly issue to the board a proposal for
12 decision regarding the occurrence of the violation and the amount
13 of any proposed administrative penalty.

14 Sec. 1104.256. DECISION BY BOARD. (a) Based on the
15 findings of fact and conclusions of law and the recommendations of
16 the hearings examiner, the board by order may determine that:

17 (1) a violation has occurred and may impose an
18 administrative penalty; or

19 (2) a violation did not occur.

20 (b) The board shall give notice of the order to the person.

21 The notice must include:

22 (1) separate statements of the findings of fact and
23 conclusions of law;

24 (2) the amount of any penalty imposed; and

25 (3) a statement of the right of the person to judicial
26 review of the order.

27 Sec. 1104.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

1 (a) Not later than the 30th day after the date on which the order
2 becomes final, the person shall:

3 (1) pay the administrative penalty;

4 (2) pay the penalty and file a petition for judicial
5 review contesting the occurrence of the violation, the amount of
6 the penalty, or both; or

7 (3) without paying the penalty, file a petition for
8 judicial review contesting the occurrence of the violation, the
9 amount of the penalty, or both.

10 (b) Within the 30-day period following the date on which the
11 order becomes final, a person who acts under Subsection (a)(3) may:

12 (1) stay enforcement of the penalty by:

13 (A) paying the penalty to the court for placement
14 in an escrow account; or

15 (B) giving to the court a supersedeas bond that
16 is approved by the court for the amount of the penalty and that is
17 effective until all judicial review of the order is final; or

18 (2) request the court to stay enforcement of the
19 penalty by:

20 (A) filing with the court a sworn affidavit of
21 the person stating that the person is financially unable to pay the
22 penalty and is financially unable to give the supersedeas bond; and

23 (B) giving a copy of the affidavit to the board by
24 certified mail.

25 (c) If the board receives a copy of an affidavit as provided
26 by Subsection (b)(2), the board may file with the court a contest to
27 the affidavit not later than the fifth day after the date the copy

1 is received.

2 (d) The court shall hold a hearing on the facts alleged in
3 the affidavit as soon as practicable and shall stay the enforcement
4 of the penalty on finding that the alleged facts are true. The
5 person who files an affidavit has the burden of proving that the
6 person is financially unable to pay the penalty and to give a
7 supersedeas bond.

8 Sec. 1104.258. COLLECTION OF PENALTY. If the person does
9 not pay the administrative penalty and the enforcement of the
10 penalty is not stayed, the board may refer the matter to the
11 attorney general for collection.

12 Sec. 1104.259. DETERMINATION BY COURT. (a) If the court
13 sustains the determination that a violation occurred, the court may
14 uphold or reduce the amount of the administrative penalty and order
15 the person to pay the full or reduced amount.

16 (b) If the court does not sustain the determination that a
17 violation occurred, the court shall order that a penalty is not
18 owed.

19 Sec. 1104.260. REMITTANCE OF PENALTY AND INTEREST. (a) If,
20 after judicial review, the administrative penalty is reduced or not
21 imposed by the court, the court shall, after the judgment becomes
22 final:

23 (1) order the appropriate amount, plus accrued
24 interest, be remitted to the person by the board if the person paid
25 the penalty under Section 1104.257(a)(2); or

26 (2) if the person paid the penalty under Section
27 1104.257(b)(1)(A) or posted a supersedeas bond, order the board to:

1 (A) execute a complete release of the escrow
2 account or bond, as appropriate, if the penalty is not imposed; or

3 (B) release the escrow account or bond, as
4 appropriate, after the reduced penalty has been paid from the
5 account or by the person.

6 (b) The interest paid under Subsection (a)(1) is accrued at
7 the rate charged on loans to depository institutions by the New York
8 Federal Reserve Bank. The interest shall be paid for the period
9 beginning on the date the penalty is paid and ending on the date the
10 penalty is remitted.

11 Sec. 1104.261. EXPENSES AND COSTS. (a) In this section,
12 "reasonable expenses and costs" includes expenses incurred by the
13 board and the attorney general in the investigation, initiation, or
14 prosecution of an action, including reasonable investigative
15 costs, court costs, attorney's fees, witness fees, and deposition
16 expenses.

17 (b) The board may assess reasonable expenses and costs
18 against a person in an administrative hearing if, as a result of the
19 hearing, an administrative penalty is assessed against the person.
20 The person shall pay expenses and costs assessed under this
21 subsection not later than the 30th day after the date the order of
22 the board requiring the payment of expenses and costs is final. The
23 board may refer the matter to the attorney general for collection of
24 the expenses and costs.

25 (c) If the attorney general brings an action against a
26 person to enforce an administrative penalty assessed under this
27 subchapter and the person is found liable for an administrative

1 penalty, the attorney general may recover, on behalf of the
2 attorney general and the board, reasonable expenses and costs.

3 Sec. 1104.262. ADMINISTRATIVE PROCEDURE. A proceeding
4 under this subchapter is subject to Chapter 2001, Government Code.

5 SECTION 2. Not later than January 1, 2012, the Texas
6 Appraiser Licensing and Certification Board shall adopt all rules,
7 fees, and forms as required by Chapter 1104, Occupations Code, as
8 added by this Act.

9 SECTION 3. (a) Except as provided by Subsection (b) of this
10 section, this Act takes effect September 1, 2011.

11 (b) Section 1104.101 and Subchapter F, Chapter 1104,
12 Occupations Code, as added by this Act, take effect March 1, 2012.