

CHAPTER 414

[House Bill No. 1917]

REAL ESTATE APPRAISERS—LICENSING

AN ACT Relating to the licensing and certification of real estate appraisers; adding a new chapter to Title 18 RCW; creating new sections; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature that only individuals who meet and maintain minimum standards of competence and conduct may provide certified appraisal services to the public.

NEW SECTION. Sec. 2. This chapter may be known and cited as the certified real estate appraiser act.

NEW SECTION. Sec. 3. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate, for or in expectation of compensation. An appraisal may be classified by subject matter into either a valuation or an analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value.

(2) "Appraisal report" means any communication, written or oral, of an appraisal.

(3) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.

(4) "Board" means the certified real estate appraiser certification board.

(5) "Certified appraisal" means an appraisal prepared or signed by a state-certified real estate appraiser. A certified appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(6) "Department" means the department of licensing.

(7) "Director" means the director of the department of licensing.

(8) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(9) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(10) "Specialized appraisal services" means all appraisal services which do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.

(11) "State-certified real estate appraiser" means a person who develops and communicates real estate appraisals and who holds a valid certificate issued to him or her for either general or residential real estate under this chapter. A state-certificated real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal" and indicate which type of certification is held.

NEW SECTION. Sec. 4. (1) No person, other than a state-certified real estate appraiser, may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification as a real estate appraiser by this state. A person who is not certified under this chapter shall not describe or refer to any appraisal or real estate located in this state by the term "certified."

(2) This section does not preclude a person who is not certified as a state-certified real estate appraiser from appraising real estate in this state for compensation.

***NEW SECTION. Sec. 5. There is established a real estate appraiser certification board which shall consist of seven members, two of whom are public members and five of whom are real estate appraisers.**

The governor shall appoint the members of the real estate appraiser certification board.

Each of the real estate appraiser members first appointed to the board shall possess a minimum of ten years of active experience as a real estate appraiser, and shall be appointed from a cross-section of real estate appraisal organizations.

Each real estate appraiser member of the board appointed after July 1, 1990, must be a state-certified real estate appraiser under this chapter at the time of appointment and during the entire term. At least two members of the board shall be state-certified general real estate appraisers. At least one member of the board shall be a state-certified residential real estate appraiser. The term of each member of the board shall be three years, except that, of the members first appointed, one shall serve for three years, three shall serve for two years, and three shall serve for one year. Upon the expiration of a term, a member of the board continues to hold office until the appointment of a successor. No person shall serve as a member of the board for more than two consecutive terms. The governor may remove a member for cause.

The public members of the board shall not be engaged in the practice of real estate appraising.

The governor shall appoint one of the members as a chairperson. The chairperson serves at the pleasure of the governor.

The board shall meet at least once a year or as necessary to conduct board business upon the call of the chairperson at times and places as the chairperson shall designate.

A quorum of the board shall be five members.

Members of the board shall receive compensation under RCW 43.03-.240 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

*Sec. 5 was vetoed, see message at end of chapter.

NEW SECTION. *Sec. 6. The real estate appraiser certification board provides technical assistance to the director relating to real estate appraisal standards and real estate appraiser qualifications and has the following responsibilities, powers, and duties:*

(1) To recommend to the director the experience, education, and examination requirements that are appropriate for each classification of state-certified real estate appraiser;

(2) To recommend to the director the examination specifications, and the minimum scaled score required to pass the certification examinations for each classification of certification required by this chapter;

(3) To make recommendations to the director regarding continuing education requirements; and

(4) To conduct administrative hearings, as requested by the director, in connection with disciplinary proceedings under this chapter.

*Sec. 6 was vetoed, see message at end of chapter.

NEW SECTION. *Sec. 7. The director shall have the following powers and duties:*

(1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) To receive and approve applications for certification as a state-certified real estate appraiser under this chapter; to establish appropriate administrative procedures for the processing of such applications; to issue certificates to qualified applicants pursuant to the provisions of this chapter; and to maintain a register of the names and addresses of individuals who are currently certified under this chapter;

(3) To provide administrative assistance to the real estate appraiser certification board to enable the board to carry out its responsibilities under this chapter;

(4) To solicit bids and enter into contracts with educational testing services or organizations for the preparation of questions and answers for certification examinations;

(5) To administer or contract for administration of certification examinations at locations and times as may be required to carry out the responsibilities under this chapter;

(6) To consider recommendations by the real estate appraiser certification board relating to the experience, education, and examination requirements for each classification of state-certified appraiser;

(7) To impose continuing education requirements as a prerequisite to renewal of certification;

(8) To consider recommendations by the real estate appraiser certification board relating to standards of professional appraisal practice in the enforcement of this chapter;

(9) To issue an annual statement describing the receipts and expenditures in the administration of this chapter during each fiscal year;

(10) To establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the provisions of this chapter;

(11) To compel the attendance of witnesses and production of books, documents, records, and other papers; to administer oaths; and to take testimony and receive evidence concerning all matters within their jurisdiction. These powers may be exercised directly by the director or the director's authorized representatives acting by authority of law;

(12) To employ such professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;

(13) To establish forms necessary to administer this chapter; and

(14) To do all other things necessary to carry out the provisions of this chapter and minimally meet the requirements of federal guidelines regarding state certification of appraisers that the director determines are appropriate for state-certified appraisers in this state.

NEW SECTION. Sec. 8. The director, members of the board, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties except for their intentional or willful misconduct.

NEW SECTION. Sec. 9. The director shall establish fees by rule, under RCW 43.24.086 and chapter 34.05 RCW and establish collection procedures for the fees.

NEW SECTION. Sec. 10. (1) Applications for examinations, original certification, and renewal certification shall be made in writing to the department on forms approved by the director. Applications for original and renewal certification shall include a statement confirming that the applicant shall comply with applicable rules and regulations and that the applicant understands the penalties for misconduct.

(2) The appropriate fees shall accompany all applications for examination, reexamination, original certification, and renewal certification.

NEW SECTION. Sec. 11. There shall be two categories of state-certified real estate appraisers:

(1) The state-certified residential real estate appraiser classification shall consist of those persons meeting the requirements for appraisal of residential real property of one to four units.

(2) The state-certified general real estate appraiser classification shall consist of those persons meeting the requirements for certification relating to the appraisal of all types of real property.

NEW SECTION. Sec. 12. (1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he or she has successfully completed the education requirements adopted by the director.

(2) As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he or she has successfully completed the education requirements adopted by the director.

(3) The education requirements of subsections (1) and (2) of this section may be waived by the director if the applicant presents evidence to the satisfaction of the director that the applicant was practicing as a real estate appraiser in the state of Washington on the effective date of this section.

NEW SECTION. Sec. 13. As a prerequisite to taking the examination for certification as a state-certified real estate appraiser, an applicant must meet the experience requirements adopted by the director.

NEW SECTION. Sec. 14. An original certification as a state-certified real estate appraiser shall be issued to persons who have satisfactorily passed a written examination as adopted by the director.

NEW SECTION. Sec. 15. Every applicant for certification who is not a resident of this state shall submit, with the application for certification, an irrevocable consent that service of process upon him or her may be made by service on the director if, in an action against the applicant in a court of this state arising out of the applicant's activities as a state-certified real estate appraiser, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant.

NEW SECTION. Sec. 16. An applicant for certification who is currently certified and in good standing under the laws of another state may obtain a certificate as a Washington state-certified real estate appraiser without being required to satisfy the examination requirements of this chapter if: The director determines that the certification requirements are substantially similar to those found in Washington state; and that the other state has a written reciprocal agreement to provide similar treatment to holders of Washington state certificates.

NEW SECTION. Sec. 17. (1) Each original and renewal certificate shall be for a period of two years.

(2) To be renewed as a state-certified real estate appraiser, the holder of a valid certificate shall apply and pay the prescribed fee to the director no earlier than one hundred twenty days prior to the expiration date of the certificate and shall demonstrate satisfaction of any continuing education requirements.

(3) If a person fails to renew a certificate prior to its expiration, the person may obtain a renewal certificate by satisfying all of the requirements for renewal and paying late renewal fees.

NEW SECTION. Sec. 18. (1) A certificate issued under this chapter shall bear the signature or facsimile signature of the director and a certificate number assigned by the director.

(2) Each state-certified real estate appraiser shall place his or her certificate number adjacent to or immediately below the title "state-certified residential real estate appraiser" or "state-certified general real estate appraiser" when used in an appraisal report or in a contract or other instrument used by the certificate holder in conducting real property appraisal activities.

NEW SECTION. Sec. 19. (1) The term "state-certified real estate appraiser" may only be used to refer to individuals who hold the certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation, or group, or in such manner that it might be interpreted as referring to a firm, partnership, corporation, group, or anyone other than an individual holder of the certificate.

(2) No certificate may be issued under this chapter to a corporation, partnership, firm, or group. This shall not be construed to prevent a state-certified appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice.

NEW SECTION. Sec. 20. An application for certification or recertification may be denied, and the certification of any state-certified real estate appraiser may be revoked, suspended, or otherwise disciplined in accordance with the provisions of this chapter, for any of the following acts or omissions:

(1) Failing to meet the minimum qualifications for state certification established by or pursuant to this chapter;

(2) Procuring or attempting to procure state certification under this chapter by knowingly making a false statement, knowingly submitting false information, or knowingly making a material misrepresentation on any application filed with the director;

(3) Paying money other than the fees provided for by this chapter to any employee of the director or the board to procure state certification under this chapter;

(4) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(5) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(6) Continuing to act as a certified real estate appraiser when his or her certificate is on an expired status;

(7) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of the director or the director's authorized representatives acting by authority of law; and

(8) Violating any provision of this chapter or any lawful rule or regulation made by the director pursuant thereto.

NEW SECTION. Sec. 21. The director may investigate the actions of a state-certified real estate appraiser or an applicant for certification or recertification. Upon receipt of information indicating that a state-certified real estate appraiser under this chapter may have violated this chapter, the director shall cause one or more of the staff investigators to make an investigation of the facts to determine whether or not there is admissible evidence of any such violation. If technical assistance is required, a staff investigator may consult with not more than one of the appraiser members of the board. If an appraiser member of the board is consulted and renders assistance in an investigation, the appraiser member is excused from service on the board in connection with any administrative hearing that may result from such investigation.

In any investigation made by the director's investigative staff, the director shall have the power to compel the attendance of witnesses and the production of books, documents, records, and other papers, to administer oaths, and to take testimony and receive evidence concerning all matters within the director's jurisdiction.

If the director determines, upon investigation, that a state-certified real estate appraiser under this chapter has violated this chapter, a statement of charges shall be prepared and served upon the state-certified real estate appraiser. This statement of charges shall require the accused party to file an answer to the statement of charges within twenty days of the date of service.

In responding to a statement of charges, the accused party may admit to the allegations, deny the allegations, or otherwise plea. Failure to make a timely response shall be deemed an admission of the allegations contained in the statement of charges.

NEW SECTION. Sec. 22. The administrative hearing on the allegations in the statement of charges may be heard by the board or an administrative law judge appointed under chapter 34.12 RCW at the time and place prescribed by the director and in accordance with the provisions of the

administrative procedure act, chapter 34.05 RCW. If the board or the administrative law judge determines that a state-certified real estate appraiser is guilty of a violation of any of the provisions of this chapter, a formal decision shall be prepared that contains findings of fact and recommendations to the director concerning the appropriate disciplinary action to be taken.

In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the addresses of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in an adjudicative proceeding whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. Sec. 23. The attorney general shall render to the director and board opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof that may be submitted by the director or board, and shall act as attorney for the director and board in all actions and proceedings brought by or against the director and board under or pursuant to any provisions of this chapter.

NEW SECTION. Sec. 24. Sections 2 through 23 of this act shall constitute a new chapter in Title 18 RCW.

NEW SECTION. Sec. 25. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by June 30, 1989, in the omnibus appropriations act, this act shall be null and void.

NEW SECTION. Sec. 26. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 27. (1) Sections 2, 3, 5 through 8, and 26 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989.

(2) Sections 1, 4, and 9 through 22 of this act shall take effect July 1, 1990.

Passed the House April 21, 1989.

Passed the Senate April 21, 1989.

Approved by the Governor May 13, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 13, 1989.

Note: Governor's explanation of partial veto is as follows:

*I am returning herewith, without my approval as to sections 5 and 6, Engrossed House Bill No. 1917 entitled:

"AN ACT Relating to the licensing and certification of real estate appraisers."

I support the approach in the bill to certify real estate appraisers. It is a voluntary certification program, which is the lowest level of regulation that will meet the anticipated need. It is also structured suitably, with the Department of Licensing responsible for actual certification and administration, assisted by an advisory board.

There are, however, several problems with the creation of the real estate appraiser certification board. I have expressed my concern with the proliferation of permanent statutory boards on numerous occasions. I believe that these boards create confusion in the public's mind and reduce government's accountability to the people. There are relatively few advisory functions that cannot be performed by temporary, nonstatutory bodies appointed by agency directors.

I am also concerned with the ambiguity surrounding this board's ability to conduct administrative hearings. The Administrative Procedure Act already specifies a hearings procedure in some detail. I think it advisable to use this procedure for hearings on real estate appraiser certification issues as it is used for numerous other matters.

Because I think advice from the public and industry representatives is indispensable to state agencies with regulatory responsibilities, I am asking the Director of the Department of Licensing to appoint an advisory body under existing statutory authority.

This partial veto will leave a number of inaccurate references in the remaining portions of the bill which should be corrected by the Legislature.

With the exception of sections 5 and 6, Engrossed House Bill No. 1917 is approved."

CHAPTER 415

[House Bill No. 1645]

MOTOR VEHICLE MANUFACTURERS AND DEALERS—FRANCHISES—SALES, TRANSFERS, AND CANCELLATIONS

AN ACT Relating to the relationship between motor vehicle dealers and manufacturers; amending RCW 46.70.180 and 46.70.190; creating a new chapter in Title 46 RCW; and repealing RCW 46.70.200 and 46.70.210.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affect the general economy of the state and the public interest and public welfare, that provision for warranty service to motor vehicles is of substantial concern to the people of this state, that the maintenance of fair competition among dealers and others is in the public interest, and that the maintenance of strong and sound dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state. The legislature further finds that there is a substantial disparity in bargaining power between automobile manufacturers and their dealers, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate the relationship between motor vehicle dealers and motor vehicle