

**EHB 1608**

**THE STATE SENATE**  
**Tuesday, March 22, 2005**

**ENGROSSED**

**House Bill No. 1608**

ENGROSSED HOUSE BILL NO. 1608 - By: MILLER (Doug) of the House and  
BRANAN of the Senate.

An Act relating to professions and occupations; amending 59  
O.S. 2001, Sections 858-208, 858-601, 858-603 and 858-604,  
which relate to the Oklahoma Real Estate License Code;  
modifying powers of the Oklahoma Real Estate Commission;  
clarifying use of certain fund; clarifying reference to  
certain act as a violation; modifying reference from injury  
to monetary loss; increasing amount of certain maximum  
payment; providing for recovery of attorney fees; and  
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 858-208, is  
amended to read as follows:

Section 858-208. The Oklahoma Real Estate Commission shall have  
the following powers and duties:

1. To promulgate rules, prescribe administrative fees by rule,  
and make orders as it may deem necessary or expedient in the  
performance of its duties;

2. To administer examinations to persons who apply for the  
issuance of licenses;

3. To sell to other entities or governmental bodies, not  
limited to the State of Oklahoma, computer testing and license  
applications to recover expended research and development costs;

1           4. To issue licenses in the form the Commission may prescribe  
2 to persons who have passed examinations or who otherwise are  
3 entitled to such licenses;

4           5. To issue licenses to and regulate the activities of real  
5 estate brokers, provisional sales associates, sales associates,  
6 branch offices, nonresidents, associations, corporations, and  
7 partnerships;

8           6. Upon showing good cause as provided for in The Oklahoma Real  
9 Estate License Code, to discipline licensees, instructors and real  
10 estate school entities by:

- 11           a. reprimand,
- 12           b. probation for a specified period of time,
- 13           c. requiring education in addition to the educational  
14 requirements provided by Section 858-307.2 of this  
15 title,
- 16           d. suspending real estate licenses and approvals for  
17 specified periods of time,
- 18           e. revoking real estate licenses and approvals,
- 19           f. imposing administrative fines pursuant to Section 858-  
20 402 of this title, or
- 21           g. any combination of discipline as provided by  
22 subparagraphs a through f of this paragraph;

- 1           7. Upon showing good cause, to modify any sanction imposed  
2 pursuant to the provisions of this section and to reinstate  
3 licenses;
- 4           8. To conduct, for cause, disciplinary proceedings ~~for~~  
5 ~~discipline, for cause, of licensees and for reinstatement of~~  
6 ~~licenses or modification of sanctions imposed;~~
- 7           9. To prescribe penalties as it may deem proper to be assessed  
8 against licensees for the failure to pay the license renewal fees as  
9 provided for in this Code;
- 10          10. To ~~cause~~ initiate the prosecution of any person who  
11 violates any of the provisions of this Code;
- 12          11. To approve instructors and organizations offering courses  
13 of study in real estate and to further require them to meet  
14 standards to remain qualified as is necessary for the administration  
15 of this Code;
- 16          12. To contract with attorneys and other professionals to carry  
17 out the functions and purposes of this Code;
- 18          13. To apply for injunctions and restraining orders for  
19 violations of the Code or the rules of the Commission; ~~and~~
- 20          14. To create an Oklahoma Real Estate Contract Form Committee  
21 by rule which will be required to draft and revise residential real  
22 estate purchase contracts and any related addenda for voluntary use  
23 by real estate licensees;

1       15. To enter into contracts and agreements for the payment of  
2 food and other reasonable expenses as authorized in the State Travel  
3 Reimbursement Act necessary to host, conduct, or participate in  
4 meetings or training sessions as is reasonable for the  
5 administration of this Code; and

6       16. To conduct an annual performance review of the Executive  
7 Director and submit the report to the Legislature.

8       SECTION 2.       AMENDATORY       59 O.S. 2001, Section 858-601, is  
9 amended to read as follows:

10       Section 858-601. A. There is hereby created in the State  
11 Treasury a revolving fund for the Oklahoma Real Estate Commission to  
12 be designated "Oklahoma Real Estate Education and Recovery Fund".  
13 The fund shall consist of monies received by the Oklahoma Real  
14 Estate Commission as fees assessed for the Oklahoma Real Estate  
15 Education and Recovery Fund under the provisions of this act. The  
16 revolving fund shall be a continuing fund not subject to fiscal year  
17 limitations and shall be under the administrative direction of the  
18 Oklahoma Real Estate Commission. The Oklahoma Real Estate  
19 Commission may invest all or part of the monies of the fund in  
20 securities offered through the "Oklahoma State Treasurer's Cash  
21 Management Program". Any interest or dividends accruing from the  
22 securities and any monies generated at the time of redemption of the  
23 securities shall be deposited in the Oklahoma Real Estate Education

1 and Recovery Fund. All monies accruing to the credit of the fund  
2 are hereby appropriated and may be budgeted and expended by the  
3 Oklahoma Real Estate Commission for the purposes specified in  
4 Section 858-605 of this title. Expenditures from said fund shall be  
5 made pursuant to the laws of this state and the statutes relating to  
6 the said Commission, and without legislative appropriation.  
7 Warrants for expenditures from said fund shall be drawn by the State  
8 Treasurer, based on claims signed by an authorized employee or  
9 employees of the said Commission and approved for payment by the  
10 Director of State Finance.

11 B. Monies in the fund shall be used to reimburse any ~~person~~  
12 claimant who has been awarded a judgment, subject to subsection C of  
13 this section, by a court of competent jurisdiction to have suffered  
14 monetary damages by an Oklahoma real estate licensee in any  
15 transaction for which a license is required under the Oklahoma Real  
16 Estate License Code because of ~~the acquisition of money or property~~  
17 ~~by any an act which would constitute~~ constituting a violation of the  
18 Oklahoma Real Estate License Code.

19 C. In determining a ~~person's~~ claimant's eligibility to recover  
20 from the fund, the Commission may conduct an independent review of  
21 the merits, findings and damages involved in the underlying action  
22 and may conduct an evidentiary hearing to determine if a claim is  
23 eligible for recovery from the fund and the amount of damages

1 awarded ~~which are due to the acquisition of money or property by a~~  
2 ~~licensee through acts~~ an act constituting a violation of the  
3 Oklahoma Real Estate License Code.

4 SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-603, is  
5 amended to read as follows:

6 Section 858-603. A. Any ~~person~~ claimant shall be eligible to  
7 seek recovery from the Oklahoma Real Estate Education and Recovery  
8 Fund if the following conditions have been met:

- 9 1. An action has been filed in district court based upon a  
10 violation specified in the Oklahoma Real Estate License Code;
- 11 2. The cause of action ~~has~~ accrued ~~on or after July 1, 1977,~~  
12 ~~and~~ not more than two (2) years prior to the filing of the action;
- 13 3. At the commencement of an action, the party filing the  
14 action shall immediately notify the Commission to this effect in  
15 writing and provide the Commission with a file-stamped copy of the  
16 petition or affidavit. Said Commission shall have the right to  
17 enter an appearance, intervene in, defend, or take any ~~such~~ action  
18 it may deem appropriate to protect the integrity of the Fund. The  
19 Commission may waive the notification requirement if it determines  
20 that the public interest is best served by the waiver, that is to  
21 best meet the ends of justice and that the ~~person~~ claimant making  
22 application made a good faith effort to comply with the notification  
23 requirements;

1           4. Final judgment is received by the ~~plaintiff~~ claimant upon  
2 such action;

3           5. The final judgment is enforced as provided by statute for  
4 enforcement of judgments in other civil actions and that the amount  
5 realized was insufficient to satisfy the judgment; and

6           6. Any compensation recovered by the ~~plaintiff~~ claimant from  
7 the judgment debtor, or from any other source for any ~~injury~~  
8 monetary loss arising out of the cause of action, has been applied  
9 to the ~~damages~~ judgment awarded by the court.

10          B. A ~~person~~ claimant shall not be qualified to make a claim for  
11 recovery from the Oklahoma Real Estate Education and Recovery Fund,  
12 if:

13           1. The ~~person~~ claimant is the spouse of the judgment debtor or  
14 a personal representative of such spouse;

15           2. The ~~person~~ claimant is a licensee who acted in ~~such person's~~  
16 their own behalf in the transaction which is the subject of the  
17 claim; or

18           3. ~~Such person's~~ The claimant's claim is based upon a real  
19 estate transaction in which the ~~person~~ claimant is, through ~~actions~~  
20 ~~of such person's~~ their own action, jointly responsible for any  
21 resulting ~~injury~~ monetary loss with respect to the property owned or  
22 controlled by the ~~person~~ claimant.

1 SECTION 4. AMENDATORY 59 O.S. 2001, Section 858-604, is  
2 amended to read as follows:

3 Section 858-604. A. Any ~~person~~ claimant who meets all of the  
4 conditions prescribed by this act may apply to the Commission for  
5 payment from the Oklahoma Real Estate Education and Recovery Fund,  
6 in an amount equal to the unsatisfied portion of ~~such person's~~ the  
7 claimant's judgment, which is actual or compensatory damages, or  
8 ~~Fifteen Thousand Dollars (\$15,000.00)~~ Twenty-five Thousand Dollars  
9 (\$25,000.00), whichever is less. ~~For purposes of this subsection,~~  
10 ~~attorney fees and costs shall not be considered as or included in~~  
11 ~~actual or compensatory damages~~ The claimant is entitled to  
12 reimbursement for attorney fees reasonably incurred in the  
13 litigation not to exceed twenty-five percent (25%) of the claimant's  
14 amount approved by the Commission. Attorney fees charged and  
15 received shall be documented, verified, and submitted with the  
16 claim. Court costs and other expenses shall not be recoverable from  
17 the fund.

18 B. Upon receipt by the claimant of the payment from the  
19 Oklahoma Real Estate Education and Recovery Fund, the claimant  
20 assigns the claimant's right, title and interest in that portion of  
21 the judgment to the Commission which shall ~~thereupon~~ be subrogated  
22 up to the amount actually paid by the fund to the claimant or to the  
23 claimant and the claimant's attorney. Upon suit to collect upon a

1 judgment, the claimant shall have priority over the fund. Any  
2 amount subsequently recovered on the judgment by the Commission, to  
3 the extent of the Commission's right, title and interest therein,  
4 shall be used to reimburse the Oklahoma Real Estate Education and  
5 Recovery Fund.

6 C. Payments for claims arising out of the same transaction  
7 which constitutes a ~~person's~~ claimant's cause of action based upon a  
8 violation of the Oklahoma Real Estate License Code shall be limited  
9 in the aggregate of Fifty Thousand Dollars (\$50,000.00) irrespective  
10 of the number of claimants or parcels of real estate involved in the  
11 transaction.

12 D. Payments for claims based upon judgments against any one  
13 licensee shall not exceed in the aggregate Fifty Thousand Dollars  
14 (\$50,000.00).

15 E. If at any time the monies in the Oklahoma Real Estate  
16 Education and Recovery Fund are insufficient to satisfy any valid  
17 claim, or portion thereof, the Commission shall satisfy such unpaid  
18 claim or portion thereof as soon as a sufficient amount of money has  
19 been deposited in the fund by collecting a special levy from ~~the~~  
20 members of ~~such~~ the fund of an amount not to exceed Five Dollars  
21 (\$5.00) each fiscal year. If the additional levy is not sufficient  
22 to pay all outstanding claims against the fund, ~~then such~~ the claims  
23 shall be paid as the money becomes available. Where there is more

1 than one ~~such~~ claim outstanding, ~~such~~ the claims shall be paid in  
2 the order that they were ~~made~~ approved.

3 F. Any claim against a corporation, association or partnership  
4 would be imputed to the managing broker(s) at the time the cause of  
5 action arose.

6 G. The license of said licensee, shall be automatically revoked  
7 upon the payment of any amount from the Oklahoma Real Estate  
8 Education and Recovery Fund ~~for satisfaction of~~ on a judgment  
9 against a licensee, ~~shall be automatically revoked~~. The license  
10 shall not be considered for reinstatement until ~~such person~~ the  
11 licensee has repaid in full, plus interest at the rate of seven  
12 percent (7%) a year, the amount paid from the Oklahoma Real Estate  
13 Education and Recovery Fund ~~for satisfaction of~~ on the judgment  
14 against the ~~person~~ licensee.

15 SECTION 5. This act shall become effective November 1, 2005.

16 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 3-21-05  
17 - DO PASS.