

AN ACT

relating to title insurance.

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

SECTION 1. Chapter 2501, Insurance Code, is amended by adding Section 2501.009 to read as follows:

Sec. 2501.009. GIFTS, GRANTS, AND DONATIONS FOR EDUCATIONAL PURPOSES. (a) The department may accept gifts, grants, and donations to enable employees of the department to participate in educational events, and for other educational purposes, related to title insurance.

(b) The commissioner may adopt rules related to the acceptance of gifts, grants, and donations described in Subsection (a).

SECTION 2. Section 2502.055(a), Insurance Code, is amended to read as follows:

(a) The activities described in this section are not rebates. Nothing in this subchapter prohibits a title insurance company or a title insurance agent from:

(1) engaging in ~~[legal]~~ promotional and educational activities that are not conditioned on the referral of title insurance business and not prohibited by Subchapter B, Chapter 541;

(2) purchasing advertising promoting the title insurance company or the title insurance agent at market rates from any person in any publication, event, or media;

1 (3) delivering to a party in the transaction or the
2 party's representative legal documents or funds which are directly
3 or indirectly related to a transaction closed by the title
4 insurance company or title insurance agent; ~~[or]~~

5 (4) participating in an association of attorneys,
6 builders, developers, realtors, or other real estate practitioners
7 provided that the level of such participation does not exceed
8 normal participation of a volunteer member of the association and
9 is not activity that would ordinarily be performed by paid staff of
10 an association; or

11 (5) providing continuing education courses at market
12 rates, regardless of whether participants receive credit hours.

13 SECTION 3. Section 2651.007, Insurance Code, is amended by
14 adding Subsections (d), (e), (f), and (g) to read as follows:

15 (d) Not later than the 20th business day after the date the
16 department receives a renewal application, the department shall
17 notify the applicant in writing of any deficiencies in the
18 application that render the renewal application incomplete.

19 (e) Not later than the fifth business day after the date the
20 renewal application is complete, the department shall notify the
21 applicant in writing of the date that the renewal application is
22 complete.

23 (f) A renewal application is automatically approved on the
24 30th business day after the date the renewal application is
25 complete, unless on or before that date the department notifies the
26 applicant in writing of the factual grounds on which the department
27 proposes to deny the license under Section 2651.301.

1 (g) The department may provide a notice required under this
2 section by e-mail.

3 SECTION 4. Section 2651.009, Insurance Code, is amended by
4 amending Subsection (c) and adding Subsections (c-1), (c-2), and
5 (c-3) to read as follows:

6 (c) Not later than the 20th business day after the date the
7 department receives a notice under Subsection (b), the department
8 shall notify the title insurance agent and appointing title
9 insurance company in writing of any deficiencies in the notice that
10 render the notice incomplete. A notice under Subsection (b) is
11 considered complete on the date the department receives the notice,
12 unless the department provides notice of the deficiencies under
13 this section.

14 (c-1) Not later than the fifth business day after the date
15 the notice under Subsection (b) is complete, the department shall
16 notify the title insurance agent and appointing title insurance
17 company in writing of the date that the notice under Subsection (b)
18 is complete.

19 (c-2) The appointment is effective on the eighth business
20 day following the date [~~the department receives~~] the [~~completed~~]
21 notice of appointment is complete and the department receives the
22 fee, unless the department proposes to reject [~~rejects~~] the
23 appointment. If the department proposes to reject [~~rejects~~] the
24 appointment, the department shall notify the title insurance agent
25 and the appointing title insurance company [~~state~~] in writing of
26 the factual grounds on which the department proposes to reject the
27 appointment [~~reasons for rejection~~] not later than the seventh

1 business day after the date on which the [~~department receives the~~
2 ~~completed~~] notice of appointment is complete.

3 (c-3) The department may provide a notice required under
4 this section by e-mail.

5 SECTION 5. Subchapter G, Chapter 2651, Insurance Code, is
6 amended by adding Sections 2651.3015 and 2651.303 to read as
7 follows:

8 Sec. 2651.3015. PROHIBITED GROUNDS FOR REJECTION, DELAY, OR
9 DENIAL. (a) Except as provided by Subsection (b) or (c), the
10 department may not reject, delay, or deny a notice of appointment
11 under Section 2651.009 based wholly or partly on a pending
12 department audit or complaint investigation or a pending
13 disciplinary action against a title insurance agent or appointing
14 title insurance company that has not been finally closed or
15 resolved by a final order issued by the commissioner on or before
16 the date on which the notice is received by the department.

17 (b) The department may reject a notice of appointment under
18 Section 2651.009 if the department determines that the appointing
19 title insurance company or the title insurance agent intentionally
20 made a material misstatement in the notice of appointment or
21 attempted to have the appointment approved by fraud or
22 misrepresentation.

23 (c) The department may delay approval of a notice of
24 appointment if:

25 (1) the title insurance agent or the appointing title
26 insurance company is the subject of a criminal investigation or
27 prosecution; or

1 (2) the deputy commissioner of the title division of
2 the department makes a good faith determination that there is a
3 credible suspicion that there are ongoing or continuing acts of
4 fraud by the title insurance agent or appointing title insurance
5 company.

6 (d) Except as provided by Subsection (e) or (f), the
7 department may not delay or deny a renewal application under
8 Section 2651.007 based wholly or partly on a department audit or
9 complaint investigation of, or disciplinary or enforcement action
10 against, an applicant or license holder that is pending and has not
11 been finally closed or resolved by a final order issued by the
12 commissioner on or before the date on which the application is
13 complete.

14 (e) The department may deny a renewal application under
15 Section 2651.007 if the department determines that the applicant or
16 license holder intentionally made a material misstatement in the
17 renewal application or attempted to obtain the license renewal by
18 fraud or misrepresentation.

19 (f) The department may delay a renewal application if:

20 (1) the applicant or license holder is the subject of a
21 criminal investigation or prosecution; or

22 (2) the deputy commissioner of the title division of
23 the department makes a good faith determination that there is a
24 credible suspicion that there are ongoing or continuing acts of
25 fraud by the applicant or license holder.

26 Sec. 2651.303. NOTICE OF DISCIPLINARY OR ENFORCEMENT
27 ACTION; AUTOMATIC DISMISSAL. (a) The department shall notify a

1 license holder in writing of a disciplinary or enforcement action
2 against the license holder not later than the 30th business day
3 after the date the department assigns a file number to the action,
4 except that this subsection does not apply to a file or action:

5 (1) that is the subject of a pending criminal
6 investigation or prosecution; or

7 (2) about which the deputy commissioner of the title
8 division of the department makes a good faith determination that
9 there is a credible suspicion that there are ongoing or continuing
10 acts of fraud by a person who is the subject of the action.

11 (b) A notice required by Subsection (a) may be provided by
12 e-mail and must provide a license holder fair notice of the alleged
13 facts known by the department on the date of the notice that
14 constitute grounds for the action.

15 (c) A disciplinary or enforcement action is automatically
16 dismissed with prejudice, unless the department serves a notice of
17 hearing on the license holder not later than the 60th business day
18 after the date the department receives a hearing request from the
19 license holder.

20 (d) The department may provide information about an
21 enforcement action, including a copy of a notice issued under this
22 section, to each title insurance company with which a title
23 insurance agent has, or proposes to obtain, an appointment.

24 SECTION 6. Subchapter B, Chapter 2652, Insurance Code, is
25 amended by adding Section 2652.059 to read as follows:

26 Sec. 2652.059. DENIAL OF LICENSE APPLICATION OR LICENSE
27 RENEWAL; APPROVAL. (a) Not later than the 20th business day after

1 the date the department receives a license application or a license
2 renewal under this chapter, the department shall notify the
3 applicant or license holder in writing of any deficiencies in the
4 application that render the application incomplete.

5 (b) Not later than the fifth business day after the date the
6 application is complete, the department shall notify the applicant
7 or license holder in writing of the date that the license
8 application or license renewal is complete.

9 (c) An application is automatically approved on the 30th
10 business day after the date the application is complete, unless on
11 or before that date the department notifies the applicant or
12 license holder in writing of the factual grounds on which the
13 department proposes to deny the application.

14 (d) The department may provide a notice required under this
15 section by e-mail.

16 SECTION 7. Subchapter E, Chapter 2652, Insurance Code, is
17 amended by adding Sections 2652.2015 and 2652.203 to read as
18 follows:

19 Sec. 2652.2015. PROHIBITED GROUNDS FOR DELAY OR DENIAL.

20 (a) Except as provided by Subsection (b) or (c), the department may
21 not delay or deny a license application or a license renewal based
22 wholly or partly on a department audit or complaint investigation
23 of, or disciplinary or enforcement action against, a license holder
24 or applicant that is pending and has not been finally closed or
25 resolved by a final order issued by the commissioner on or before
26 the date on which the initial or renewal application is complete.

27 (b) The department may delay a license application or

license renewal if:

(1) the applicant or license holder is the subject of a criminal investigation or prosecution; or

(2) the deputy commissioner of the title division of the department makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by the applicant or license holder.

(c) The department may deny a license application or license renewal if the department determines that the applicant or license holder intentionally made a material misstatement in the license application or license renewal or the applicant or license holder attempted to obtain the license or renewal by fraud or misrepresentation.

Sec. 2652.203. NOTICE OF DISCIPLINARY OR ENFORCEMENT ACTION; AUTOMATIC DISMISSAL. (a) The department shall notify a license holder of a disciplinary action or enforcement action against the license holder not later than the 30th business day after the date the department assigns a file number to the action, except that this subsection does not apply to a file or action:

(1) that is the subject of a pending criminal investigation or prosecution; or

(2) about which the deputy commissioner of the title division of the department makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by a person who is the subject of the action.

(b) A notice required by Subsection (a) must provide a license holder fair notice of the alleged facts known by the

1 department on the date of the notice that constitute grounds for the
2 action.

3 (c) A disciplinary or enforcement action is automatically
4 dismissed with prejudice, unless the department serves a notice of
5 hearing on the license holder not later than the 60th business day
6 after the date the department receives a hearing request from the
7 license holder.

8 (d) The department may provide information about an
9 enforcement action, including a copy of a notice issued under this
10 section, to each title insurance agent or direct operation with
11 which an escrow officer has, or proposes to obtain, employment.

12 SECTION 8. Subchapter B, Chapter 2703, Insurance Code, is
13 amended by adding Section 2703.0515 to read as follows:

14 Sec. 2703.0515. CERTAIN REQUIREMENTS PROHIBITED. (a) A
15 title insurance company is not required to offer or provide in
16 connection with a title insurance policy an endorsement insuring a
17 loss from damage resulting from the use of the surface of the land
18 for the extraction or development of coal, lignite, oil, gas, or
19 another mineral if the policy includes a general exception or
20 exclusion from coverage a loss from damage resulting from the use of
21 the surface of the land for the extraction or development of coal,
22 lignite, oil, gas, or another mineral.

23 (b) In this section, "general exception or exclusion" means
24 a provision in a title insurance policy or other title insuring form
25 that provides that title insurance coverage under the policy or
26 form:

27 (1) is subject to, and the title insurer does not

1 insure title to, and excepts from the description of the covered
2 property, coal, lignite, oil, gas, and other minerals in and under
3 and that may be produced from the covered property, together with
4 related rights, privileges, and immunities; or

5 (2) does not cover a lease, grant, exception, or
6 reservation of coal, lignite, oil, gas, or other minerals, or
7 related rights, privileges, and immunities, appearing in the public
8 records.

9 (c) An additional premium or other amount may not be charged
10 for an endorsement to a loan policy of title insurance if the
11 endorsement:

12 (1) insures against loss from damage to improvements
13 or permanent buildings located on land that results from the future
14 exercise of any right existing on the date of the loan policy to use
15 the surface of the land for the extraction or development of coal,
16 lignite, oil, gas, or another mineral;

17 (2) expressly does not insure against loss resulting
18 from subsidence; and

19 (3) was promulgated by the commissioner in calendar
20 year 2009.

21 SECTION 9. Subchapter B, Chapter 2703, Insurance Code, is
22 amended by adding Sections 2703.055 and 2703.056 to read as
23 follows:

24 Sec. 2703.055. REQUIREMENT OF CERTAIN PROVISIONS
25 PROHIBITED. The commissioner may not require by rule, or through
26 adoption of a title insurance policy or other insuring form, that a
27 title insurance policy delivered or issued for delivery in this

1 state:

2 (1) insure against a loss that a person with an
3 interest in real property sustains from damage to the property by
4 reason of severance of minerals from the surface estate; or

5 (2) provide insurance as to ownership of minerals.

6 Sec. 2703.056. EXCEPTIONS; MINERAL INTERESTS. (a) Subject
7 to the underwriting standards of the title insurance company, a
8 title insurance company may in a commitment for title insurance or a
9 title insurance policy include a general exception or a special
10 exception to except from coverage a mineral estate or an instrument
11 that purports to reserve or transfer all or part of a mineral
12 estate.

13 (b) A reduction to, or credit on a premium charge for, a
14 policy of title insurance or other insuring form may not be directly
15 or indirectly based on an exclusion of, or general or special
16 exception to, a mineral estate in the title insurance policy.

17 (c) The inclusion in a title insurance policy of a general
18 exception or a special exception described by Subsection (a) does
19 not create title insurance coverage as to the condition or
20 ownership of the mineral estate.

21 SECTION 10. Section 2703.153, Insurance Code, is amended by
22 amending Subsection (d) and adding Subsections (h) and (i) to read
23 as follows:

24 (d) A title insurance company or a title insurance agent
25 aggrieved by a department requirement concerning the submission of
26 information may bring a suit in a district court in Travis County
27 alleging that the request for information:

(1) is unduly burdensome; or

(2) is not a request for information material to fixing and promulgating premium rates or another matter that may be the subject of the periodic ~~[biennial]~~ hearing and is not a request reasonably designed to lead to the discovery of that information.

(h) The contents of the statistical report, including any amendments to the statistical report, must be established in a rulemaking hearing under Subchapter B, Chapter 2001, Government Code.

(i) An amendment to the contents of the statistical report may not apply retroactively.

SECTION 11. Section 2703.202, Insurance Code, is amended by amending Subsections (b) and (d) and adding Subsections (g), (h), (i), (j), (k), (l), (m), (n), and (o) to read as follows:

(b) The commissioner shall order a public hearing to consider changing a premium rate, including fixing a new premium rate, in response to a written ~~[At the]~~ request of:

(1) a title insurance company;

(2) an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by the department;

(3) an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by the department; or

(4) the office of public insurance counsel~~[, the commissioner shall order a public hearing to consider changing a premium rate]~~.

1 (d) Notwithstanding Subsection (c), [~~at the request of a~~
2 ~~title insurance company or the public insurance counsel,~~] a public
3 hearing held under Subsection (a) or under Section 2703.206 must be
4 conducted by the commissioner as a contested case hearing under
5 Subchapters C through H and Subchapter Z, Chapter 2001, Government
6 Code, at the request of:

7 (1) a title insurance company;

8 (2) an association composed of at least 50 percent of
9 the number of title insurance agents and title insurance companies
10 licensed or authorized by the department;

11 (3) an association composed of at least 20 percent of
12 the number of title insurance agents licensed or authorized by the
13 department; or

14 (4) the office of public insurance counsel.

15 (g) If a hearing held under Subsection (a) is not conducted
16 as a contested case hearing, the commissioner shall render a
17 decision and issue a final order not later than the 120th day after
18 the date the commissioner receives a written request under
19 Subsection (b).

20 (h) If a hearing held under Subsection (a) is conducted as a
21 contested case hearing:

22 (1) not later than the 30th day after the date the
23 commissioner receives a request for a public hearing under
24 Subsection (b), the commissioner shall issue a notice of call for
25 items to be considered at the hearing;

26 (2) the commissioner may not require responses to the
27 notice of call before the 60th day after the date the commissioner

1 issues the notice of call;

2 (3) the commissioner shall issue a notice of public
3 hearing requested under Subsection (d) not later than the 30th day
4 after the date responses to the notice of call are required under
5 Subdivision (2);

6 (4) the commissioner shall commence the public hearing
7 not earlier than the 120th day after the date the commissioner
8 issues a notice of hearing under Subdivision (3);

9 (5) the commissioner shall close the public hearing
10 not later than the 150th day after the date the commissioner issues
11 the notice of hearing under Subdivision (3); and

12 (6) the commissioner shall render a decision and issue
13 a final order not later than the 60th day after the record made in
14 the public hearing is closed under Subdivision (5).

15 (i) A party's presentation of relevant, admissible oral
16 testimony in a hearing under this section may not be limited.

17 (j) The commissioner shall consider each matter presented
18 in a hearing under this section and announce in a public hearing all
19 decisions on all matters considered.

20 (k) A party described by Subsection (b) may petition a
21 district court in Travis County to enter an order requiring the
22 commissioner to comply with the deadlines described by this section
23 if the commissioner fails to meet a requirement in Subsection (g) or
24 (h).

25 (l) Subject to Subsection (m), if the commissioner fails to
26 comply with the requirements under Subsection (g) or (h)(6), a
27 combination of at least three associations, persons, or entities

1 listed in Subsection (b) may jointly petition a district court of
2 Travis County to adopt a rate based on the record made in the
3 hearing before the commissioner under this section.

4 (m) If the record made in the hearing before the
5 commissioner is not complete before the request for the court to
6 adopt a premium rate under Subsection (1), the court shall hold an
7 evidentiary hearing to establish a record before adopting the
8 premium rate.

9 (n) After a petition has been filed under Subsection (1),
10 the commissioner may not issue findings or an order related to the
11 subject matter of the petition until after the date the court enters
12 a final judgment.

13 (o) A district court may appoint a magistrate to adopt a
14 rate under this section.

15 SECTION 12. Section 2703.203, Insurance Code, is amended to
16 read as follows:

17 Sec. 2703.203. PERIODIC [~~BIENNIAL~~] HEARING. The
18 commissioner shall hold a [~~biennial~~] public hearing not earlier
19 than July 1 after the fifth anniversary of the closing of a hearing
20 held under this chapter [~~of each even-numbered year~~] to consider
21 adoption of premium rates and other matters relating to regulating
22 the business of title insurance that an association, title
23 insurance company, title insurance agent, or member of the public
24 admitted as a party under Section 2703.204 requests to be
25 considered or that the commissioner determines necessary to
26 consider.

27 SECTION 13. Section 2703.204, Insurance Code, is amended to

1 read as follows:

2 Sec. 2703.204. ADMISSION AS PARTY TO PERIODIC [~~BIENNIAL~~]
3 HEARING. (a) Subject to this section, a trade association whose
4 membership is composed of at least 20 percent of the members of an
5 industry or group represented by the trade association, an
6 association, a person or entity described by Section 2703.202(b),
7 or department staff [~~an individual or association or other entity~~
8 ~~recommending adoption of a premium rate or another matter relating~~
9 ~~to regulating the business of title insurance~~] shall be admitted as
10 a party to the periodic [~~biennial~~] hearing under Section 2703.203.

11 (b) A party to any portion of the periodic [~~the ratemaking~~
12 ~~phase of the biennial~~] hearing relating to ratemaking may request
13 that the commissioner remove any other party to that portion of [~~the~~
14 ~~ratemaking phase of~~] the hearing on the grounds that the other party
15 does not have a substantial interest in title insurance. A decision
16 of the commission to deny or grant the request is final and subject
17 to appeal in accordance with Section 36.202.

18 SECTION 14. Section 2703.207, Insurance Code, is amended to
19 read as follows:

20 Sec. 2703.207. NOTICE OF CERTAIN HEARINGS. Not later than
21 the 60th day before the date of a hearing under Section 2703.202,
22 2703.203, or 2703.206, notice of the hearing and of each item to be
23 considered at the hearing shall be:

24 (1) sent directly to all parties to the previous
25 hearing conducted under Section 2703.202, 2703.203, or 2703.206, if
26 the hearing was conducted as a contested case hearing [~~title~~
27 ~~insurance companies and title insurance agents~~]; and

1 (2) published in the Texas Register and on the
2 department's Internet website [~~provided to the public in a manner~~
3 ~~that gives fair notice concerning the hearing~~].

4 SECTION 15. Section 2703.205, Insurance Code, is repealed.

5 SECTION 16. Section 2703.0515, Insurance Code, as added by
6 this Act, applies only to a title insurance policy that is delivered
7 or issued for delivery on or after January 1, 2012. A policy
8 delivered or issued for delivery before January 1, 2012, is
9 governed by the law as it existed immediately before the effective
10 date of this Act, and that law is continued in effect for that
11 purpose.

12 SECTION 17. Sections 2703.055 and 2703.056, Insurance Code,
13 as added by this Act, apply only to a title insurance policy that is
14 delivered or issued for delivery on or after January 1, 2012. A
15 policy delivered or issued for delivery before January 1, 2012, is
16 governed by the law as it existed immediately before the effective
17 date of this Act, and that law is continued in effect for that
18 purpose.

19 SECTION 18. This Act takes effect September 1, 2011.

H.B. No. 2408

President of the Senate

Speaker of the House

I certify that H.B. No. 2408 was passed by the House on May 13, 2011, by the following vote: Yeas 134, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2408 on May 25, 2011, by the following vote: Yeas 143, Nays 0, 3 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2408 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor