

By: Muñoz, Jr.

H.B. No. 4239

A BILL TO BE ENTITLED

AN ACT

relating to regulation of title insurance rates.

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

SECTION 1. Section 2702.051, Insurance Code, is amended to read as follows:

Sec. 2702.051. APPLICABILITY. This subchapter does not apply to the closing or settlement of:

(1) a residential real property transaction regulated by the Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) except as provided by Section 2702.054(b); or

(2) a real property transaction if the closing or settlement is not actually handled by:

(A) a title insurance company, a title insurance agent, or an attorney for a title insurance company or title insurance agent; or

(B) a representative of a title insurance company, a title insurance agent, or an attorney for a title insurance company or title insurance agent.

SECTION 2. Section 2702.054, Insurance Code, is amended to read as follows:

Sec. 2702.054. USE OF ALTERNATE SETTLEMENT STATEMENT FORM PERMITTED. (a) A title insurance company or title insurance agent may use the uniform settlement statement form prepared under the Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533)

1 instead of the uniform closing and settlement statement form  
2 prescribed by the department under this subchapter.

3 (b) A title insurance company or title insurance agent that  
4 uses the uniform settlement statement form permitted by Subsection  
5 (a) in a residential real estate transaction regulated by the Real  
6 Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) as  
7 the closing and settlement statement for the transaction shall  
8 disclose on a form promulgated by the commissioner under Subsection  
9 (c) the following information:

10 (1) an accurate statement of:

11 (A) the title insurance premium; and

12 (B) the amount of each portion of that premium  
13 paid to a third party; and

14 (2) an itemization of all other fees and charges paid  
15 to the settlement agent.

16 (c) The commissioner shall promulgate the form required by  
17 Subsection (b).

18 SECTION 3. The heading to Subchapter D, Chapter 2703,  
19 Insurance Code, is amended to read as follows:

20 SUBCHAPTER D. FIXING AND PROMULGATING PREMIUM RATES; FLEXIBLE RATE  
21 BANDS

22 SECTION 4. The heading to Section 2703.151, Insurance Code,  
23 is amended to read as follows:

24 Sec. 2703.151. FIXING AND PROMULGATING PREMIUM RATES;  
25 FLEXIBLE RATE BANDS.

26 SECTION 5. Section 2703.151, Insurance Code, is amended by  
27 amending Subsections (a) and (c) and adding Subsection (a-1) to

1 read as follows:

2 (a) Except as provided by Subsection (b), the commissioner  
3 shall fix and promulgate the premium rates to be charged by a title  
4 insurance company or by a title insurance agent and set flexible  
5 rate bands within which a title insurance company or title  
6 insurance agent may charge a rate under Subchapter F for title  
7 insurance policies or for other forms prescribed or approved by the  
8 commissioner.

9 (a-1) The flexible rate band set under Subsection (a) must  
10 be a range that is a maximum percentage above and a maximum  
11 percentage below the rate fixed and promulgated under that  
12 subsection.

13 (c) Except as provided by Subsection (b) and Subchapter F  
14 [for a premium charged for reinsurance], a premium may not be  
15 charged for a title insurance policy or for another prescribed or  
16 approved form at a rate different than the rate fixed and  
17 promulgated by the commissioner.

18 SECTION 6. Section [2703.152](#), Insurance Code, is amended to  
19 read as follows:

20 Sec. 2703.152. FACTORS CONSIDERED IN FIXING PREMIUM RATES  
21 AND SETTING FLEXIBLE RATE BANDS. (a) In fixing premium rates and  
22 setting flexible rate bands, the commissioner shall:

23 (1) consider all relevant income and expenses of title  
24 insurance companies and title insurance agents attributable to  
25 engaging in the business of title insurance in this state; and

26 (2) consider and promote the availability and  
27 affordability of title insurance, increased efficiency in title

1 operations, and price competition among title insurance companies  
2 and agents.

3 (b) The premium rates fixed and flexible rate bands set by  
4 the commissioner must be:

5 (1) reasonable and not excessive or unfairly  
6 discriminatory as to the public; [~~and~~]

7 (2) nonconfiscatory as to title insurance companies  
8 and title insurance agents; and

9 (3) designed to promote price competition among  
10 insurers to provide rates and premiums that are responsive to  
11 competitive market conditions.

12 SECTION 7. The heading to Section 2703.153, Insurance Code,  
13 is amended to read as follows:

14 Sec. 2703.153. COLLECTION OF DATA FOR FIXING PREMIUM RATES  
15 AND SETTING FLEXIBLE RATE BANDS; ANNUAL STATISTICAL REPORT.

16 SECTION 8. Sections 2703.153(a), (c), (d), and (h),  
17 Insurance Code, are amended to read as follows:

18 (a) Each title insurance company and title insurance agent  
19 engaged in the business of title insurance in this state shall  
20 annually submit to the department, as required by the department to  
21 collect data to use to fix premium rates and set flexible rate  
22 bands, a statistical report containing information relating to:

23 (1) loss experience;

24 (2) expense of operation; and

25 (3) other material matters.

26 (c) Not less frequently than once every five years, the  
27 commissioner shall evaluate the information required under this

1 section to determine whether the department needs additional or  
2 different information or no longer needs certain information to  
3 promulgate rates and set flexible rate bands. If the department  
4 requires a title insurance company or title insurance agent to  
5 include new or different information in the statistical report,  
6 that information may be considered by the commissioner in fixing  
7 premium rates and setting flexible rate bands if the information  
8 collected is reasonably credible for the purposes for which the  
9 information is to be used.

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

14 (1) is unduly burdensome; or

15 (2) is not a request for information material to  
16 fixing and promulgating premium rates or setting flexible rate  
17 bands or another matter that may be the subject of the periodic  
18 hearing and is not a request reasonably designed to lead to the  
19 discovery of that information.

20 (h) The contents of the statistical report, including any  
21 amendments to the statistical report, must be established in a  
22 rulemaking hearing under Subchapter B, Chapter 2001, Government  
23 Code. The requirements for reporting of income and expenses on the  
24 statistical report shall conform to the manner in which accounting  
25 records are normally kept in the ordinary course of business of a  
26 title insurance company or title insurance agent.

27 SECTION 9. The heading to Subchapter E, Chapter 2703,

1 Insurance Code, is amended to read as follows:

2 SUBCHAPTER E. PROCEDURES REGARDING PREMIUM RATES, FLEXIBLE RATE  
3 BANDS, POLICY FORMS, AND [~~OTHER~~] RELATED MATTERS

4 SECTION 10. Section 2703.201, Insurance Code, is amended to  
5 read as follows:

6 Sec. 2703.201. HEARING REQUIRED FOR FIXING PREMIUM RATE AND  
7 SETTING FLEXIBLE RATE BAND. Before a premium rate or flexible rate  
8 band may be fixed or set and a premium charged, the department must  
9 provide reasonable notice and a hearing must be afforded to title  
10 insurance companies, title insurance agents, and the public.

11 SECTION 11. The heading to Section 2703.202, Insurance  
12 Code, is amended to read as follows:

13 Sec. 2703.202. HEARING REQUIRED FOR CHANGE IN PREMIUM RATE  
14 OR FLEXIBLE RATE BAND.

15 SECTION 12. Sections 2703.202(a), (b), (d), (e), (l), (m),  
16 and (o), Insurance Code, are amended to read as follows:

17 (a) A premium rate or a flexible rate band previously fixed  
18 or set by the commissioner may not be changed until after the  
19 commissioner holds a public hearing.

20 (b) The commissioner shall order a public hearing to  
21 consider changing a premium rate or flexible rate band, including  
22 fixing a new premium rate or setting a new flexible rate band, in  
23 response to a written request of an interested person [~~+~~

24 [~~(1) a title insurance company,~~

25 [~~(2) an association composed of at least 50 percent of~~  
26 ~~the number of title insurance agents and title insurance companies~~  
27 ~~licensed or authorized by the department,~~

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

4           ~~[(4) the office of public insurance counsel].~~

5           (d) Notwithstanding Subsection (c), a public hearing held  
6 under Subsection (a) or under Section 2703.206 must be conducted by  
7 the commissioner as a contested case hearing under Subchapters C  
8 through H and Subchapter Z, Chapter 2001, Government Code, at the  
9 request of an interested person [+

10           ~~[(1) a title insurance company;~~

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

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

17           ~~[(4) the office of public insurance counsel].~~

18           (e) Information received or requested by the commissioner  
19 as part of an individual audit or examination under Chapters 2602  
20 and 2651 may not be used for rate or flexible rate band setting  
21 under Subchapter D, Chapter 2703. Nothing in this section  
22 prohibits a party from conducting discovery in a ratemaking or  
23 other proceeding or producing other information requested by the  
24 department, or verifying the data reported under a statistical plan  
25 or report promulgated by the commissioner.

26           (1) Subject to Subsection (m), if the commissioner fails to  
27 comply with the requirements under Subsection (g) or (h)(6), a

1 combination of at least three interested [~~associations,~~] persons[~~,~~  
2 ~~or entities listed in Subsection (b)~~] may jointly petition a  
3 district court of Travis County to adopt a rate or flexible rate  
4 band based on the record made in the hearing before the commissioner  
5 under this section.

6 (m) If the record made in the hearing before the  
7 commissioner is not complete before the request for the court to  
8 adopt a premium rate or flexible rate band under Subsection (l), the  
9 court shall hold an evidentiary hearing to establish a record  
10 before adopting the premium rate or flexible rate band.

11 (o) A district court may appoint a magistrate to adopt a  
12 rate or flexible rate band under this section.

13 SECTION 13. Sections [2703.203](#), [2703.204](#), and [2703.206](#),  
14 Insurance Code, are amended to read as follows:

15 Sec. 2703.203. PERIODIC HEARING. The commissioner shall  
16 hold a public hearing not earlier than July 1 after the fifth  
17 anniversary of the closing of a hearing held under this chapter to  
18 consider adoption of premium rates or flexible rate bands and other  
19 matters relating to regulating the business of title insurance that  
20 an interested person [~~association, title insurance company, title~~  
21 ~~insurance agent, or member of the public~~] admitted as a party under  
22 Section [2703.204](#) requests to be considered or that the commissioner  
23 determines necessary to consider.

24 Sec. 2703.204. ADMISSION AS PARTY TO PERIODIC HEARING.

25 (a) Subject to this section, an interested [~~a trade association~~  
26 ~~whose membership is composed of at least 20 percent of the members~~  
27 ~~of an industry or group represented by the trade association, an~~

1 ~~association, a] person [or entity described by Section~~  
2 ~~2703.202(b),]~~ or department staff shall be admitted as a party to  
3 the periodic hearing under Section 2703.203.

4 (b) A party to any portion of the periodic hearing relating  
5 to ratemaking or the setting of a flexible rate band may request  
6 that the commissioner remove any other party to that portion of the  
7 hearing on the grounds that the other party does not have a  
8 substantial interest in title insurance. A decision of the  
9 commission to deny or grant the request is final and subject to  
10 appeal in accordance with Section 36.202.

11 Sec. 2703.206. COMMISSIONER AUTHORITY TO HOLD HEARINGS AS  
12 NECESSARY. At any time, the commissioner may order a public hearing  
13 to consider adoption of premium rates or flexible rate bands and  
14 other matters relating to regulating the business of title  
15 insurance as the commissioner determines necessary or proper.

16 SECTION 14. Chapter 2703, Insurance Code, is amended by  
17 adding Subchapter F to read as follows:

18 SUBCHAPTER F. FLEXIBLE RATING

19 Sec. 2703.301. FLEXIBLE RATING. (a) A title insurance  
20 company may file with the commissioner to use a premium rate within  
21 the flexible rate band set by the commissioner under Section  
22 2703.151.

23 (b) A rate filed under this section:

24 (1) must be filed with actuarial support and any other  
25 information required by the commissioner by rule; and

26 (2) may not be excessive, inadequate, or unfairly  
27 discriminatory for the risks to which the rate applies.

1        (c) A rate filed under this section is effective until the  
2 earlier of the effective date of a rate subsequently filed under  
3 this section or a rate fixed and promulgated by the commissioner  
4 under Section 2703.151.

5        (d) After a rate is fixed and promulgated under Section  
6 2703.151, a title insurance company shall:

7            (1) file rates under this section; or

8            (2) notify the commissioner in writing that the  
9 company will use the promulgated and fixed rate.

10        (e) The commissioner by rule shall adopt procedures for a  
11 rate filing under this section.

12        Sec. 2703.302. DISAPPROVAL OF RATE IN FLEXIBLE RATE FILING;  
13 HEARING. (a) Subject to Section 2703.303, the commissioner shall  
14 disapprove a rate if the commissioner determines that the rate  
15 filing made under this subchapter does not meet the standards  
16 prescribed by Section 2703.301(b).

17        (b) If the commissioner disapproves a filing, the  
18 commissioner shall issue an order specifying in what respects the  
19 filing fails to meet the requirements of this subchapter.

20        (c) The filer is entitled to a hearing on written request  
21 made to the commissioner not later than the 30th day after the date  
22 the order disapproving the rate filing under this subchapter takes  
23 effect.

24        Sec. 2703.303. DISAPPROVAL OF RATE IN EFFECT; HEARING. (a)  
25 The commissioner may disapprove a rate filed under Section 2703.301  
26 that is in effect only after a hearing before the commissioner. The  
27 commissioner shall provide the filer written notice of the hearing

1 not later than the 20th day before the date of the hearing.

2 (b) An order disapproving a rate filed under Section  
3 2703.301 that is in effect must be issued not later than the 15th  
4 day after the date of the close of the hearing. The order must:

5 (1) specify in what respects the rate or rate filing  
6 fails to meet the requirements of this subchapter; and

7 (2) state the date on which further use of the rate is  
8 prohibited, which may not be earlier than the 45th day after the  
9 date of the close of the hearing under this section.

10 Sec. 2703.304. GRIEVANCE. (a) An insured, underwriter, or  
11 agent who is aggrieved with respect to a rate filed under Section  
12 2703.301 that is in effect, or the public insurance counsel, may  
13 apply to the commissioner in writing for a hearing on the filing.  
14 The application must specify the grounds for the applicant's  
15 grievance.

16 (b) The commissioner shall hold a hearing on an application  
17 filed under Subsection (a) not later than the 30th day after the  
18 date the commissioner receives the application if the commissioner  
19 determines that:

20 (1) the application is made in good faith;

21 (2) the applicant would be aggrieved as alleged if the  
22 grounds specified in the application were established; and

23 (3) the grounds specified in the application otherwise  
24 justify holding the hearing.

25 (c) The commissioner shall provide written notice of a  
26 hearing under Subsection (b) to the applicant and each insurer that  
27 made the filing not later than the 10th day before the date of the

1 hearing.

2 (d) If, after the hearing, the commissioner determines that  
3 the rate filing under Section 2703.301 does not meet the  
4 requirements of this subchapter, the commissioner shall issue an  
5 order:

6 (1) specifying in what respects the rate filing fails  
7 to meet the requirements of this subchapter; and

8 (2) stating the date on which the rate is no longer in  
9 effect, which must be within a reasonable period after the date of  
10 the order.

11 (e) The commissioner shall send copies of the order issued  
12 under Subsection (d) to the applicant and each affected insurer.

13 Sec. 2703.305. PUBLIC INFORMATION. A filing made and any  
14 supporting information filed under this subchapter, as of the date  
15 the filing is received by the department:

16 (1) is public information;

17 (2) is not subject to any exceptions to disclosure  
18 under Chapter 552, Government Code; and

19 (3) cannot be withheld from disclosure under any other  
20 law.

21 SECTION 15. Section 2702.054, Insurance Code, as amended by  
22 this Act, applies only to a residential real estate transaction  
23 that closes on or after January 1, 2018. A residential real estate  
24 transaction that closes before January 1, 2018, is governed by the  
25 law as it existed immediately before the effective date of this Act,  
26 and that law is continued in effect for that purpose.

27 SECTION 16. Section 2703.153(h), Insurance Code, as amended

1 by this Act, applies only to an annual statistical report issued on  
2 or after January 1, 2018. An annual statistical report issued  
3 before January 1, 2018, is governed by the law as it existed  
4 immediately before the effective date of this Act, and that law is  
5 continued in effect for that purpose.

6 SECTION 17. Subchapter F, Chapter 2703, Insurance Code, as  
7 added by this Act, applies only to a title insurance premium rate  
8 effective on or after January 1, 2018. A title insurance premium  
9 rate effective before January 1, 2018, is governed by the law as it  
10 existed immediately before the effective date of this Act, and that  
11 law is continued in effect for that purpose.

12 SECTION 18. The commissioner of insurance shall hold a  
13 public hearing to set the initial flexible rate band under Section  
14 2703.151, Insurance Code, as amended by this Act, and any other  
15 related matters not later than January 1, 2018.

16 SECTION 19. This Act takes effect September 1, 2017.