

By: Carona

S.B. No. 687

A BILL TO BE ENTITLED

AN ACT

relating to the use of title insurance to insure certain interests in personal property.

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

SECTION 1. Section 2501.003, Insurance Code, as effective April 1, 2005, is amended to read as follows:

Sec. 2501.003. GENERAL DEFINITIONS. (a) In this title:

(1) "Abstract plant" means an abstract plant as defined by the department under Section 2501.004.

(2) "Attorney" means:

(A) a person who is licensed to practice law and is a member of the State Bar of Texas; or

(B) a Texas professional corporation organized to provide professional legal services.

(3) "Direct operation" means the operations of a title insurance company under a license issued to the company under Subchapter B, Chapter 2651. A reference in this title to a title insurance agent shall be construed to include a direct operation unless the context indicates otherwise.

(4) "Escrow officer" means an attorney, a bona fide employee of an attorney licensed as an escrow officer, a bona fide employee of a direct operation, or a bona fide employee of a title insurance agent whose responsibilities include:

(A) countersigning title insurance forms;

1 (B) supervising the preparation and delivery of  
2 title insurance forms;

3 (C) signing escrow checks; or

4 (D) closing the transaction, as described by  
5 Section 2501.006.

6 (4-a) "Filing office" means an office designated as a  
7 filing office under Section 9.501, Business & Commerce Code.

8 (5) "Foreign title insurance company" means a title  
9 insurance company organized under the laws of a jurisdiction other  
10 than this state.

11 (6) "Joint abstract plant operation" means a joint  
12 abstract plant operation as defined by the department under Section  
13 2501.004.

14 (7) "Person" includes an individual, corporation,  
15 association, partnership, or trust.

16 (8) "Premium" means the premium rates promulgated by  
17 the commissioner under Subchapters D and E, Chapter 2703, and  
18 includes a charge for:

19 (A) title examination and closing the  
20 transaction, regardless of whether the examination or closing is  
21 performed by an attorney; and

22 (B) issuing the policy.

23 (9) "Residential real property" means real property  
24 that is improved and is designed principally for occupancy by one to  
25 four families. The term includes an individual unit of a  
26 condominium or cooperative.

27 (9-a) "Secured party" has the meaning assigned by

1 Section 9.102(73), Business & Commerce Code.

2 (9-b) "Security interest" has the meaning assigned by  
3 Section 1.201(35), Business & Commerce Code.

4 (10) "Thing of value" includes any payment, advance,  
5 funds, loan, service, or other consideration.

6 (11) "Title examination" means the search and  
7 examination of a title to determine the conditions of the title to  
8 be insured and to evaluate the risk to be undertaken in the issuance  
9 of a title insurance policy or other title insurance form. The term  
10 includes a search of the records of a filing office.

11 (12) [~~"Title insurance" means:~~

12 [~~(A) insurance that insures, guarantees, or~~  
13 ~~indemnifies an owner of real property, or another interested in the~~  
14 ~~real property, against loss or damage resulting from:~~

15 [~~(i) a lien or encumbrance on or defect in~~  
16 ~~the title to the real property; or~~

17 [~~(ii) the invalidity or impairment of a~~  
18 ~~lien on the real property; or~~

19 [~~(B) any business that is substantially~~  
20 ~~equivalent to the insurance described by Paragraph (A) and is~~  
21 ~~conducted in a manner designed to evade the provisions of this~~  
22 ~~title.~~

23 [~~(13)~~] "Title insurance agent" means a person owning  
24 or leasing and controlling an abstract plant or as a participant in  
25 a bona fide joint abstract plant operation and authorized in  
26 writing by a title insurance company to solicit insurance and  
27 collect premiums and to issue or countersign policies on the

company's behalf.

(13) [~~(14)~~] "Title insurance company" means:

(A) a domestic company organized under this title to engage in the business of title insurance, as described by Section 2501.005;

(B) a foreign title insurance company that:

(i) meets the requirements of this title;

and

(ii) holds a certificate of authority to engage in business in this state; or

(C) any other domestic or foreign company that:

(i) meets the requirements of this title;

and

(ii) holds a certificate of authority to insure a title to real property in this state or insure an interest described by Section 2501.0035(2) regarding personal property.

(b) In this title, a term not defined under Subsection (a) that is used in Chapter 9, Business & Commerce Code, has the meaning assigned by that code.

SECTION 2. Chapter 2501, Insurance Code, as effective April 1, 2005, is amended by adding Section 2501.0035 to read as follows:

Sec. 2501.0035. DEFINITION OF TITLE INSURANCE. In this title, "title insurance" means:

(1) insurance that insures, guarantees, or indemnifies an owner of real property, or another interested in the real property, against loss or damage resulting from:

(A) a lien or encumbrance on or defect in the

title to the real property; or

(B) the invalidity or impairment of a lien on the real property;

(2) insurance that insures, guarantees, or indemnifies a secured party, or another person holding a security interest in personal property as provided by the uniform commercial code, against loss or damage resulting from:

(A) a lien, security interest, or defect in the title to the personal property; or

(B) the invalidity or impairment of a lien or security interest on the personal property; or

(3) any business that:

(A) is substantially equivalent to the insurance described by Subdivision (1) or (2); and

(B) is conducted in a manner designed to evade the provisions of this title.

SECTION 3. Section 2501.005(a), Insurance Code, as effective April 1, 2005, is amended to read as follows:

(a) For purposes of this title, a person engages in the business of title insurance if the person:

(1) as insurer, guarantor, or surety, makes or proposes to make a contract or policy of title insurance or its equivalent;

(2) transacts or proposes to transact any phase of title insurance, including:

(A) soliciting;

(B) title examination other than an examination

1 conducted by an attorney;

2 (B-1) examining searches of the records of a  
3 filing office, other than an examination conducted by an attorney;

4 (C) closing the transaction other than a closing  
5 conducted by an attorney;

6 (D) executing a contract of title insurance; and

7 (E) insuring and transacting matters arising out  
8 of the contract after the contract is executed, including  
9 reinsurance; or

10 (3) makes a guaranty or warranty of a title search, a  
11 search of the records of a filing office, or a title examination, or  
12 of any component of a title search, a search of the records of a  
13 filing office, or title examination, if the person is not the person  
14 who performs the search or examination.

15 SECTION 4. Sections 2502.003(a), (b), and (d), Insurance  
16 Code, as effective April 1, 2005, are amended to read as follows:

17 (a) Except as provided by Subsection (c), a title insurance  
18 company may not wilfully issue a binder for title insurance or a  
19 title insurance policy showing no outstanding enforceable recorded  
20 liens on real property or personal property against which the  
21 company knows an outstanding enforceable recorded lien exists.

22 (b) A title insurance company knows that an outstanding  
23 enforceable recorded lien exists against ~~real~~ property if, based  
24 on an examination of the title or a search of the records of a filing  
25 office, as appropriate, under which the binder for title insurance  
26 or title insurance policy is issued, the company determines that  
27 the lien is valid and enforceable.

1 (d) Except as otherwise provided by this section, a title  
2 insurance company may determine the insurability of title to [~~real~~]  
3 property and any other matter that the company considers to be  
4 insurable under a binder for title insurance or a title insurance  
5 policy issued in connection with the property.

6 SECTION 5. Section 2551.001(e), Insurance Code, as  
7 effective April 1, 2005, is amended to read as follows:

8 (e) This title does not regulate the practice of law by an  
9 attorney. The actions of an attorney in examining a title to real  
10 property, in examining a search of the records of a filing office in  
11 regards to personal property, or in closing a real property  
12 transaction, regardless of whether a title insurance policy is  
13 issued, does not constitute the business of title insurance, unless  
14 the attorney elects to be licensed as an escrow officer.

15 SECTION 6. Section 2551.051, Insurance Code, as effective  
16 April 1, 2005, is amended by amending Subsection (a) and adding  
17 Subsection (d) to read as follows:

18 (a) A private corporation may be created and licensed under  
19 this title for the following purposes:

20 (1) to compile and own or lease, or to acquire and own  
21 or lease, records or abstracts of title to real property or  
22 interests in real property in this state or other jurisdictions, to  
23 insure titles to that real property or interests in that real  
24 property, and to indemnify the owners of that real property, or the  
25 holders of interests in or liens on that real property, against loss  
26 or damage resulting from an encumbrance on or defect in the title to  
27 the real property or interests in the real property; and

1           (2) in transactions in which title insurance affecting  
2 real property is to be or is being issued, to supervise or approve  
3 the signing of legal instruments affecting real property titles,  
4 disbursement of money, prorations, delivery of legal instruments,  
5 closing of transactions, or issuance of commitments for title  
6 insurance specifying the requirements for title insurance and the  
7 defects in title necessary to be cured or corrected.

8           (d) A private corporation created and licensed under this  
9 title may also insure titles to personal property or interests in  
10 that property and indemnify a secured party, or another person  
11 holding a security interest in the personal property as provided by  
12 the uniform commercial code, against loss or damage resulting from:

13                 (1) a lien, security interest, or defect in the title  
14 to the personal property; or

15                 (2) the invalidity or impairment of a lien or security  
16 interest on the personal property.

17           SECTION 7. Section 2551.301(a), Insurance Code, as  
18 effective April 1, 2005, is amended to read as follows:

19           (a) Except as provided by Subsection (b), a title insurance  
20 company may not issue a title insurance policy on any personal  
21 property or on real property located in this state involving a  
22 potential policy liability of more than 50 percent of the company's  
23 capital stock and surplus as stated in the most recent annual  
24 statement of the company.

25           SECTION 8. Section 2551.302, Insurance Code, as effective  
26 April 1, 2005, is amended to read as follows:

27           Sec. 2551.302. REQUIREMENTS FOR REINSURING POLICIES. A



1 title insurance company may reinsure any of its policies and  
2 contracts issued on personal property or on real property located  
3 in this state, if:

4 (1) the reinsuring title insurance company is  
5 authorized to engage in business in this state under this title; and

6 (2) the department first approves the form of the  
7 reinsurance contract.

8 SECTION 9. Section 2551.304, Insurance Code, as effective  
9 April 1, 2005, is amended to read as follows:

10 Sec. 2551.304. ACCEPTANCE OF REINSURANCE. A title  
11 insurance company may accept a reinsurance risk on personal  
12 property or on real property located in this state only from an  
13 authorized title insurance company.

14 SECTION 10. Section 2551.351(a), Insurance Code, as  
15 effective April 1, 2005, is amended to read as follows:

16 (a) A foreign or domestic corporation forfeits any right to  
17 engage in business in this state if the corporation:

18 (1) issues any form of title insurance policy, or any  
19 other adopted or approved form, on personal property or on real  
20 property in this state other than a form prescribed by the  
21 department;

22 (2) charges any premium rate on an owner, mortgagee,  
23 or other title insurance policy, or on any other adopted or approved  
24 form, on personal property or on real property in this state other  
25 than a premium rate prescribed by the commissioner; or

26 (3) otherwise engages in the business of title  
27 insurance in relation to personal property or to real property in

1 this state on a form or for a premium rate not prescribed by the  
2 department or commissioner.

3 SECTION 11. Section 2552.002(1), Insurance Code, as  
4 effective April 1, 2005, is amended to read as follows:

5 (1) "Attorney's title insurance" means:

6 (A) insurance that:

7 (i) insures, guarantees, or indemnifies an  
8 owner of real property in this state, or another interested in the  
9 real property, against loss or damage resulting from:

10 (a) a lien or encumbrance on or defect  
11 in the title to the real property; or

12 (b) the invalidity of a lien on the  
13 real property; and

14 (ii) is issued only in connection with and  
15 as part of a real property transaction and a title opinion of a  
16 title attorney; ~~or~~

17 (B) insurance that insures, guarantees, or  
18 indemnifies a secured party, or another person holding a security  
19 interest in personal property as provided by the uniform commercial  
20 code, against loss or damage resulting from:

21 (i) a lien, security interest, or defect in  
22 the title to the personal property; or

23 (ii) the invalidity or impairment of a lien  
24 or security interest on the personal property; or

25 (C) any business that is substantially  
26 equivalent to the insurance business described by Paragraph (A) or  
27 Paragraph (B) and is conducted in a manner designed to evade the

1 provisions of this title.

2 SECTION 12. Section 2552.004(c), Insurance Code, as  
3 effective April 1, 2005, is amended to read as follows:

4 (c) A person engages in the business of attorney's title  
5 insurance if the person engages in or proposes to engage in any  
6 business that is substantially equivalent to the business of  
7 attorney's title insurance as part of a real or personal property  
8 transaction and title opinion of a title attorney in a manner  
9 designed to evade the applicable provisions of this title.

10 SECTION 13. Section 2552.154(a), Insurance Code, as  
11 effective April 1, 2005, is amended to read as follows:

12 (a) A title attorney shall make, file, and pay for a surety  
13 bond payable to the department in the amount of \$7,500 and issued by  
14 a corporate surety company authorized to write surety bonds in this  
15 state. The bond shall obligate the principal and surety to pay any  
16 pecuniary loss that is incurred by:

17 (1) a participant in a real property settlement or  
18 closing in which, or a secured party for which, an attorney's title  
19 insurance policy is issued by the title attorney and that is  
20 sustained through an act of fraud, dishonesty, theft, embezzlement,  
21 or wilful misapplication by a title attorney; and

22 (2) any party to an escrow agreement in which the title  
23 attorney is escrowee and that is sustained through an act of fraud,  
24 dishonesty, forgery, theft, embezzlement, or wilful misapplication  
25 by the title attorney, either directly and alone or in conspiracy  
26 with another person.

27 SECTION 14. Section 2552.157, Insurance Code, as effective

1 April 1, 2005, is amended to read as follows:

2       Sec. 2552.157. AUTHORITY TO ISSUE POLICY AFFECTING REAL  
3 PROPERTY. A title attorney may issue a title insurance policy  
4 affecting real property for an attorney's title insurance company  
5 only if the title attorney:

6               (1) is appointed by the attorney's title insurance  
7 company as its title attorney;

8               (2) bases each title opinion on separate and current  
9 title evidence, provided by a licensed abstract plant, of the  
10 records of the county in which the real property, the title to which  
11 is to be insured, is located; and

12               (3) pays to the licensed abstract plant the portion of  
13 the premium agreed to by the title attorney and the abstract plant  
14 and approved by the department, if the title attorney contracts to  
15 obtain the title evidence from the abstract plant as provided by  
16 Section 2552.153.

17       SECTION 15. Section 2602.251, Insurance Code, as effective  
18 April 1, 2005, is amended to read as follows:

19       Sec. 2602.251. COVERED CLAIMS IN GENERAL. An unpaid claim  
20 is a covered claim if:

21               (1) the claim is made by an insured under a title  
22 insurance policy to which this chapter applies;

23               (2) the claim arises out of the policy and is within  
24 the coverage and applicable limits of the policy;

25               (3) the title insurance company that issued the policy  
26 or assumed the policy under an assumption certificate is an  
27 impaired title insurance company; and

1           (4) the insured real property or a lien on the real  
2   property or on the personal property is located in this state.

3           SECTION 16. Section 2602.255, Insurance Code, as effective  
4   April 1, 2005, is amended to read as follows:

5           Sec. 2602.255. CLAIMS NOT COVERED. The following are not  
6   covered claims:

7           (1) an amount due a reinsurer, title insurance  
8   company, insurance pool, or underwriting association as a  
9   subrogation recovery or otherwise;

10          (2) a supplementary payment obligation incurred  
11   before a determination is made under this chapter that a title  
12   insurance company or agent is impaired, including:

13                   (A) adjustment fees or expenses;

14                   (B) attorney's fees or expenses;

15                   (C) court costs;

16                   (D) interest;

17                   (E) enhanced damages, sought as a recovery  
18   against the insured, the impaired title insurance company or agent,  
19   or the association, that arise under Chapter 541 of this code or  
20   Subchapter E, Chapter 17, Business & Commerce Code; and

21                   (F) bond premiums;

22          (3) a shortage of trust funds or in an escrow account  
23   resulting from the insolvency of a financial institution;

24          (4) exemplary, extracontractual, or bad faith damages  
25   awarded against an insured or title insurance company by a court  
26   judgment;

27          (5) a claim under Section 2602.252 by a claimant who

1 has a lien against the real or personal property that was the  
2 subject of the transaction from which the claim arises, unless the  
3 lien is held to be invalid as a matter of law;

4 (6) a claim under Section 2602.251, 2602.252, or  
5 2602.253 by a claimant who caused or substantially contributed to  
6 the claimant's loss by the claimant's action or omission; and

7 (7) a claim filed with the association after the final  
8 date set by the court for the filing of claims against a receiver of  
9 an impaired title insurance company or agent.

10 SECTION 17. Section 2651.101(a), Insurance Code, as  
11 effective April 1, 2005, is amended to read as follows:

12 (a) Each licensed title insurance agent and direct  
13 operation shall make, file, and pay for a surety bond payable to the  
14 department and issued by a corporate surety company authorized to  
15 write surety bonds in this state. The bond shall obligate the  
16 principal and surety to pay for any pecuniary loss sustained by:

17 (1) any participant in an insured real property  
18 transaction or personal property transaction through an act of  
19 fraud, dishonesty, theft, embezzlement, or wilful misapplication  
20 by a title insurance agent or direct operation; or

21 (2) the department as a result of any administrative  
22 expense incurred in a receivership of a title insurance agent or  
23 direct operation.

24 SECTION 18. The heading to Chapter 2702, Insurance Code, as  
25 effective April 1, 2005, is amended to read as follows:

26 CHAPTER 2702. CLOSING AND SETTLEMENT: TRANSACTIONS AFFECTING  
27 REAL PROPERTY

1           SECTION 19. This Act applies only to a title insurance  
2 policy or contract delivered, issued for delivery, or renewed on or  
3 after January 1, 2006. A policy or contract delivered, issued for  
4 delivery, or renewed before January 1, 2006, is governed by the law  
5 as it existed immediately before the effective date of this Act, and  
6 that law is continued in effect for that purpose.

7           SECTION 20. This Act takes effect September 1, 2005.