

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 3271  
By: Eiland (Janek)  
Business & Commerce  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Title insurance is totally regulated as to rates, forms, and procedures and has been so regulated since the 1920s. The commissioner of insurance (commissioner) sets title insurance rates after a contested rate case based primarily on information that the Texas Department of Insurance (TDI) gathers on a yearly basis. The commissioner must call for data yearly and conduct a hearing in even-numbered years. In the recent past, TDI has requested information in addition to the information collected in the TDI's Statistical Plan on only very few occasions. The most recent rate case was one of those occasions. TDI staff filed discovery requests on many parties and non-parties to the rate case. Many of the companies objected to the breadth and scope of the information sought, not because they did not wish to furnish the information or wished to hide relevant information from the commissioner, but rather because the companies had not been required to keep the information in the manner requested and to dig through years of data would be extremely costly. One company filed suit to have the inquiry overturned; the parties and non-parties and TDI settled their differences and the hearing proceeded.

This bill does not limit the scope or amount of information the commissioner can obtain from title companies. It simply provides that TDI must tell the companies in advance what information must be maintained and in what form. It also provides that the information contained in the data call must be collected for at least two years to be statistically meaningful.

Also, for many years, commissioners have admitted as parties to a rate case entities and individuals with no demonstrated interest in title insurance rates. Existing law provides that only persons or entities making a rate recommendation are to be admitted as parties. Once a person has been admitted as a party, the law does not provide to the commissioner the ability to prevent a party who has in the past made no recommendation as to rates from clogging the process at subsequent hearings.

H.B. 3271 addresses these points without limiting the commissioner's ability to allow as parties persons, entities, or associations who demonstrate a minimum interest in title insurance. This bill does not limit the ability of any person, entity, or association to provide non-party testimony about rates or any other matter.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 2703.153, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 2703.153 and 2703.203, Insurance Code, as follows:

Sec. 2703.153. New heading: COLLECTION OF DATA FOR FIXING PREMIUM RATES; ANNUAL STATISTICAL REPORT. (a) Requires each title insurance company and title insurance agent engaged in the business of title insurance in this state to annually submit to the Texas Department of Insurance (TDI) as required by TDI to collect data to use to fix premium rates, a statistical report containing information, rather than all information, relating to loss experience, expense of operation, and other material matters.

(b) Requires the information to be submitted in the form adopted by rule by the commissioner of insurance (commissioner) in accordance with Subchapter B, Chapter 2001 (Administrative Procedure), Government Code, rather than the form prescribed by TDI.

(c) Prohibits certain information from being considered by the commissioner in fixing premium rates until the expiration of a period stated in the rules if the rules adopted under Subsection (b) are amended to require a title insurance company or title insurance agent to include new or different information in the statistical report. Requires the period to be sufficiently long to ensure that the information collected is statistically meaningful and may not expire earlier than the second anniversary of the date the amendment to the rules becomes effective.

(d) Authorizes a title insurance company or a title insurance agent aggrieved by a requirement concerning the submission of information imposed under this section or otherwise imposed in connection with a biennial hearing under Subchapter E to bring a suit in a district court in Travis County alleging that the request for information is abusive, is unduly burdensome, is made for the purposes of harassment, is otherwise improper or improperly requests privileged information, or is not a request for information material to fixing and promulgating premium rates or another matter that may be the subject of the biennial hearing and is not a request reasonably designed to lead to the discovery of that information.

(e) Provides that, on filing of a suit under Subsection (d), the requirement that the title insurance company or title insurance agent bringing the suit comply with the request for the information is abated as to that title insurance company or title insurance agent. Authorizes the district court to enter an order requiring the title insurance company or title insurance agent to comply with the request for information subject to the limitations, if any, imposed by the court.

(f) Authorizes another title insurance company or title insurance agent subject to the requirements described by Subsection (d) to intervene, as permitted by the court, in a suit brought under that subsection.

(g) Requires a district court to act on a suit brought under Subsection (d) not later than the 60th day after the date the suit is filed.

Sec. 2703.203. BIENNIAL HEARING. Requires the commissioner to hold a biennial public hearing not earlier than July 1 of each even-numbered year to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public admitted as a party under Section 2703.204 requests to be considered or that the commissioner determines necessary to consider.

SECTION 2. Amends Section 2703.204, Insurance Code, as follows:

Sec. 2703.204. ADMISSION AS PARTY TO BIENNIAL HEARING. (a) Creates this subsection from existing text and makes a conforming change.

(b) Requires an individual or association seeking to be made a party with respect to a portion of the biennial hearing that relates to adoption of a premium rate or a rule to provide to the commissioner a detailed summary of the individual's or association's interest in the business of title insurance.

(c) Requires the summary required by Subsection (b) for an individual to include a statement of the number of real estate transactions in which the individual has been involved and with respect to which the individual has requested and paid for title insurance. Requires the summary for an association to include a statement of the number of members of the association.

(d) Provides that an association is presumed to have a substantial interest in the business of title insurance if the association has at least 250 members.

(e) Provides that a party to the biennial hearing may file an action in a district court in Travis County to remove any other party to a portion of the biennial hearing that relates to adoption of a premium rate or a rule on the grounds that the other party does not have a substantial interest in the business of title insurance.

SECTION 3. Amends Section 2703.205(d), Insurance Code, as follows:

(d) Requires the State Office of Administrative Hearings to conduct the ratemaking phase of the hearing in accordance with Chapter 40 (Duties of State Office of Administrative Hearings and Commissioner in Certain Proceedings; Rate Setting Proceedings) at the direction of the commissioner or at the written request of an association or other entity recommending adoption of a premium rate and seeking admission as a party to the ratemaking phase of the hearing, rather than a person seeking admission as a party to the ratemaking phase of the hearing. Makes a conforming change.

SECTION 4. Makes application of a premium rate applicable to a title insurance policy prospective to a policy that is delivered, issued for delivery, or renewed on or after January 1, 2009.

SECTION 5. Effective date: September 1, 2007.