

BILL ANALYSIS

C.S.H.B. 3271

By: Eiland

Insurance

Committee Report (Substituted)

BACKGROUND AND PURPOSE

Title Insurance is totally regulated as to rates, forms and procedures and has been so regulated since the 1920's. The commissioner sets title insurance rates after a contested rate case based primarily on information that the Insurance Department gathers on a yearly basis. The Commissioner must call for data yearly and conduct a hearing in even-numbered years. In the recent past, the department has requested information in addition to the information collected in the Department'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 voluminous and extremely costly. One company filed suit to have the inquiry overturned and the parties and non-parties and the department 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 the department 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 2 years to be a statistically meaningful amount of data.

Also for many years, commissioners have admitted as parties to the 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 the commissioner with the ready ability to prevent a party who has in the past made no recommendation as to rates from clogging the process at subsequent hearings. The bill 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. The 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

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 1 (Section 2703.153 of the Texas Insurance Code) of this bill.

ANALYSIS

SECTION 1 of the bill provides that title companies and title insurance agents shall annually file statistical information as to loss experience, expenses of operation and other material matters as required by the Commissioner of Insurance. The form on which the information is to be provided is to be adopted by the commissioner. The information shall be used in setting rates only when the information has been collected for a statistically meaningful period but not less than 2 years.

Subsection (d) of Section 2703.153 provides that a title company aggrieved by a discovery request may bring suit in a Travis County District Court objecting to the request. The grounds for the suit are:

1. abusive
2. unduly burdensome
3. is made for the sake of harassment
4. is otherwise improper or seeks privileged information

5. is not a request for information material to fixing and promulgating premium rates or another matter that may be the subject of the hearing or designed to lead to discovery of that information.

Subsection (e) provides that upon filing suit, the request for information is abated as to the Plaintiff. The district court can order the information to be provided or may place limitations on the information to be provided. Another title company can intervene into the suit if subject to similar discovery requests. To avoid undue delay in the process, the District is required to act within 60 days after the date the suit is filed.

SECTION 2 amends Section 2703.204 concerning admission as parties to the rate hearing. Any party seeking to make a rate recommendation is required to provide the commissioner with a detailed summary of the individual or association's interest in the business of title insurance. An individual shall provide the commissioner with a statement as to the number of real estate transactions in which the person has been involved and the number of title insurance policies the person has paid for. This information will assist the commissioner in complying with the existing law that a party must be admitted in order to make a recommendation as to title insurance rates.

This section places no specific number of transactions as a threshold nor does it prevent the commissioner from accepting testimony from non-party witnesses. It does however reserve party status and the rights of a party to compel discovery, present expert witnesses and cross-examine witnesses to persons and entities with a true experience and expertise in the business of title insurance.

An association seeking admission as a party to the rate case must provide evidence of the number of its members. An association with more than 250 members is presumed to have a substantial business in title insurance. Certainly, an association of title insurance companies or agents will also be admitted as a party since its members clearly have an interest in title insurance.

SECTION 3 Section 2703.205 (d) of the Texas Insurance Code states that 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, the State Office of Administrative Hearings shall conduct the ratemaking phase of the hearing in accordance with Chapter 40. A request under this subsection must be made at the time the association or entity seeks to be admitted as a party to the hearing but may not be made later than the 10th day after the date notice of the hearing is provided under Section 2703.207. Finally, this Act applies only to the premium rate applicable to a title insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2009. A premium rate applicable to a policy that is delivered, issued for delivery, or renewed before January 1, 2009, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3271 differs from the original house bill in several ways. First, in SECTION 1 Section 2703.203 the phrases "and complete" and "not later than December 15 of each even-numbered year" are left out of the substitute. The original house bill placed restrictions on the Commissioner of Insurance as to the time frame for conducting the hearing. These restrictions were removed and the time frame remains as is under current law.

Also, in SECTION 2, C.S.H.B. 3271 leaves out the language found in Subsection (d) Section 2703.204 of the original house bill. The bill as filed contained a provision allowing the commissioner to require a bond from a proposed party with questionable credentials. This provision was deleted from the substitute. Thus, with the deletion of this subsection in the original house bill, C.S.H.B. 3271 moves and changes the information found in Section 2703.204 (e) of the original house bill, to Subsection (d) of the substitute. However, the language now

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reads " An association is presumed to have a substantial interest in the business of title insurance if the association has at least 250 members".