

BILL ANALYSIS

C.S.S.B. 1153
By: Carona
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Title insurance is used to ensure the unencumbered ownership of real property and protects the lender and buyer of the property from any outstanding claims or liens against the property in question. However, current statute does not allow for the use of title insurance for personal property such as boats and aircrafts when personal property is used as collateral on a loan. Therefore, lenders making a loan in which personal property is used as collateral are not protected from any other claims of ownership on that property.

As proposed, C.S.S.B. 1153 provides for the use of title insurance for personal property to ensure that a debtor has ownership rights or interest in the property sufficient to transfer the property to the lender as collateral.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 1 (Section 2751.004 of the Texas Insurance Code) of this bill.

ANALYSIS

SECTION 1. Amends Title 11, Insurance Code, by adding Subtitle F, as follows:

SUBTITLE F. TITLE INSURANCE FOR CERTAIN PERSONAL PROPERTY INTERESTS

CHAPTER 2751. TITLE INSURANCE FOR PERSONAL PROPERTY INTERESTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2751.001. GENERAL DEFINITIONS. (a) Provides that the definitions under Sections 2501.003(2)-(5), (7), (10), and (12)-(14) apply to the regulation of title insurance under this chapter.

(b) Provides that a term not defined under Subsection (a) that is used in Chapter 9 (Secured Transactions), Business & Commerce Code, has the same meaning assigned by that code.

Sec. 2751.002. DEFINITIONS OF PERSONAL PROPERTY AND PERSONAL PROPERTY TITLE INSURANCE. Defines "personal property" and "personal property title insurance."

Sec. 2751.003. APPLICABILITY OF OTHER LAWS. (a) Provides that this code, other than this chapter, does not apply to the business of personal property title insurance, except as provided by Subsection (b).

(b) Sets forth specific laws that apply to the business of personal property title insurance.

Sec. 2751.004. GENERAL RULES. Requires the commissioner of insurance (commissioner) to adopt rules to implement and enforce this chapter.

[Reserves Sections 2751.005-2751.050 for expansion.]

SUBCHAPTER B. RATES AND FORMS

Sec. 2751.051. **FIXING AND PROMULGATING PREMIUM RATES AND FORMS.**

(a) Requires the commissioner to fix and promulgate the premium rates to be charged by a title insurance company or agent for personal property title insurance policies under this chapter and prescribe the forms to be used in connection with those policies.

(b) Prohibits a premium from being charged for a personal property title insurance policy or for another prescribed or approved form at a rate different than the rate fixed and promulgated by the commissioner.

(c) Prohibits the commissioner from limiting the number of forms for personal property title insurance if the forms meet the requirement of this title.

Sec. 2751.052. **FACTORS CONSIDERED IN FIXING PREMIUM RATES.** (a) Requires the commissioner, in fixing premium rates, to consider all relevant income and expenses of title insurance companies and title insurance agents attributable to engaging in the business of personal property title insurance.

(b) Requires the premium rates fixed by the commissioner to be reasonable, adequate, not unfairly discriminatory, nonconfiscatory, and not excessive.

Sec. 2751.053. **HEARING REQUIRED.** (a) Requires the Texas Department of Insurance (TDI) to provide reasonable notice and a hearing to title insurance companies, agents thereof, and the public, before a premium rate may be fixed and forms adopted for personal property title insurance.

(b) Provides that a hearing under this section is subject to Subchapter B (Proceeding Related to Promulgation of Rates), Chapter 40, and is handled as a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 2751.054. **COMMISSIONER ORDER.** (a) Requires the commissioner to issue an order prescribing the rates and forms to be used in connection with personal property title insurance policies under this chapter not later than the 90th day after the date of a hearing under Section 2751.053.

(b) Requires the commissioner's order promulgating rates to be based on the evidence adduced at the hearing.

Sec. 2751.055. **REVISIONS TO RATES AND FORMS; HEARING.** (a) Authorizes a title insurance company to apply to TDI, in the manner prescribed by the commissioner, for approval of a new or revised personal property title insurance form or a change in a rate associated with such a form. Authorizes the commissioner to approve or disapprove an application after a hearing.

(b) Requires a hearing to be conducted not later than the 60th day after the date on which TDI receives the application.

(c) Requires the commissioner to approve or disapprove the application not later than the 90th day after the date of the hearing.

[Reserves Sections 2751.056-2751.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES OF INSURERS AND AGENTS

Sec. 2751.101. **ISSUANCE OF POLICIES.** Authorizes a title insurance company to issue a personal property title insurance policy if the policy covers personal property or fixtures of a secured party or other insured or debtor located in this state.

Sec. 2751.102. USE OF FORMS. (a) Requires a title insurance company or an agent thereof to use the forms prescribed by the commissioner in issuing a personal property title insurance policy.

(b) Prohibits an insurer, unless authorized by rule adopted by the commissioner, from entering into a contract or other agreement concerning a personal property title insurance policy if the contract or other agreement is not expressed in the policy, and provides that such a contract or agreement is void.

Sec. 2751.103. AGENTS. Authorizes a title insurance agent or direct operation to accept orders for authorized insurance products under this chapter. Requires the agent or direct operation to act according to the authority granted to the agent or direct operation by the title insurance company issuing the product.

Sec. 2751.104. AGENT COMPENSATION. (a) Requires the company issuing a personal property title insurance policy to pay the title insurance agent who places the order for the policy a total compensation equal to 30 percent of the premium charged for the personal property title insurance or product thereof.

(b) Prohibits a title insurance company from paying a commission to a title insurance agent for an application for coverage placed directly with the company, notwithstanding Subsection (a).

(c) Provides that the commission paid under Subsection (a) does not constitute a violation of Section 2502.051 (Rebates and Discounts Prohibited).

SECTION 2. Amends Section 2501.002(a), Insurance Code, as follows:

(a) Provides that the purpose of this title (Title Insurance) is to completely regulate the business of title insurance on real property and, as described by Subtitle F, on personal property to ensure certain protections.

SECTION 3. Amends Section 2501.003(12), Insurance Code, to redefine "title insurance." to include personal property title insurance.

SECTION 4. Amends Section 2551.001(e), Insurance Code, to provide that this title does not regulate the practice of law by an attorney. Provides that certain actions of an attorney, including in examining records regarding an interest in insured under Chapter 2751, or in closing a real property or personal property transaction does not constitute the business of title insurance, with an exception.

SECTION 5. Amends Section 2551.051(a), Insurance Code, to set forth the purposes for which a private corporation is authorized to be created and licensed under this title, including to supervise or approve the signing of legal instruments affecting the interest to be insured, rather than real property titles, and to issue personal property title insurance under Chapter 2751.

SECTION 6. Amends Section 2551.302, Insurance Code, to authorize a title insurance company to reinsure any of its policies and contracts issued under Chapter 2751 and on those of real property under certain conditions.

SECTION 7. Amends Section 2551.304, Insurance Code, to authorize a title insurance company to accept a reinsurance risk on real property located in this state or on interest described by Section 2751.002(2) only from an authorized title insurance company.

SECTION 8. Requires the State Office of Administrative Hearings to conduct the initial hearing required by Section 2751.053, Insurance Code, as added by this Act not later than November 1, 2007.

SECTION 9. Makes application of this Act prospective to January 1, 2008.

SECTION 10. Effective date: September 1, 2007.

C.S.S.B. 1153 80(R)

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 1153 differs from the original senate bill by adding language to SECTION 1 Section 2751.003 (b) of the original house bill. C.S.S.B. 1153 adds "Section 2501.005, other than Subsections (a) (2) (A)-(C) of that section;", "Section 2501.007", "Chapter 2553", and "Chapter 2601" to the original house bill. However, C.S.S.B. 1153 deletes "other than Section 2551.003" from the original senate bill.

C.S.S.B. 1153 amends the language found in Section 2751.101 as found in the original senate bill. Whereas the original senate bill stated " A title insurance company may issue to a secured party or another person that holds a security interest in personal property or fixtures a personal property title insurance policy in this state if the policy covers personal property or fixtures of a debtor or a secured party and is located in this state", C.S.S.B. 1153 now states that "A title insurance company may issue a personal property title insurance policy in this state if the policy covers personal property or fixtures, or a secured party or other insured, or a debtor, located in this state."

Next, in SECTION 1, C.S.S.B. 1153 deletes "to a secured party or another person that holds a security interest in" and "or fixtures" from Section 2751.102 of the original senate bill.

Also, "or personal property" as added in the original senate bill in SECTION 3 Section 2501.003(12)(A) is not added in the substitute. C.S.S.B. 1153 also amends SECTION 3 Section 2501.003(12)(B) of the original senate bill. Whereas the original senate bill stated "(B) to the extent that other provisions of this title are applicable to that insurance under Section 2751.003: (i) insurance that insures, guarantees, or indemnifies a secured party or another person that holds a security interest in personal property, as provided by Chapter 9, Business & Commerce 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; and (ii) any other insurance described by Section 2751.002(2);", C.S.S.B. 1153 simply states "personal property title insurance, as defined by Chapter 2751;".