

By: Deshotel

H.B. No. 2696

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. Title 11, Insurance Code, is amended by adding Subtitle F to read 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) The definitions under Sections 2501.003(2)-(5), (7), (10), and (12)-(14) apply to the regulation of title insurance under this chapter.

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

Sec. 2751.002. DEFINITIONS OF PERSONAL PROPERTY AND PERSONAL PROPERTY TITLE INSURANCE. In this subtitle:

(1) "Personal property" has the meaning assigned by Section 1.04, Tax Code.

(2) "Personal property title insurance" means coverage that insures:

(A) whether affirming or negating, one or more of

1 the elements of attachment, perfection, or priority of a security
2 interest in personal property or fixtures;

3 (B) the results, as to correctness,
4 completeness, or other criteria, of a search of:

5 (i) the filing office of the financing
6 statement record of a debtor; or

7 (ii) any other database, whether publicly
8 or privately maintained, such as court dockets, tax records, motor
9 vehicle department records, or the records of the Federal Aviation
10 Administration as to aircraft, the United States Coast Guard as to
11 vessels, or the United States Department of Transportation;

12 (C) the status of ownership of, rights to
13 transfer rights in, or title with respect to personal property or
14 fixtures;

15 (D) the effectiveness of the filing of a
16 financing statement with a filing office, or any other record with
17 any publicly maintained database or registry;

18 (E) the lien status of personal property or
19 fixtures, or compliance with Title 1, Business & Commerce Code, the
20 Uniform Commercial Code, international conventions such as the
21 United Nations Commission on International Trade Law (UNCITRAL), or
22 similar laws or regulations; or

23 (F) any of the matters covered by Paragraphs
24 (A)-(E) with respect to the laws of any other domestic or foreign
25 jurisdiction.

26 Sec. 2751.003. APPLICABILITY OF OTHER LAWS. (a) Except as
27 provided by Subsection (b), this code, other than this chapter,

1 does not apply to the business of personal property title
2 insurance.

3 (b) The following laws apply to the business of personal
4 property title insurance:

5 (1) Section 2501.005;

6 (2) Section 2501.007;

7 (3) Section 2502.001;

8 (4) Sections 2502.051, 2502.053, 2502.055, and
9 2502.056;

10 (5) Chapter 2551;

11 (6) Chapter 2553;

12 (7) Chapter 2601;

13 (8) Chapter 2651;

14 (9) Chapter 2652;

15 (10) Section 2701.002;

16 (11) Chapter 2703, except to the extent of any
17 conflict with Subchapter B of this chapter;

18 (12) Section 2704.001, other than Subdivisions (1) and
19 (2) of that section;

20 (13) Section 2704.002; and

21 (14) Section 2704.004.

22 Sec. 2751.004. GENERAL RULES. The commissioner, in the
23 manner prescribed by Subchapter A, Chapter 36, shall adopt rules as
24 necessary to implement and enforce this chapter.

25 [Sections 2751.005-2751.050 reserved for expansion]

26 SUBCHAPTER B. RATES AND FORMS

27 Sec. 2751.051. FIXING AND PROMULGATING PREMIUM RATES AND

1 FORMS. (a) The commissioner shall, in the manner prescribed by
2 this subchapter:

3 (1) fix and promulgate the premium rates to be charged
4 by a title insurance company or by a title insurance agent for
5 personal property title insurance policies under this chapter; and

6 (2) prescribe the forms to be used in connection with
7 those policies.

8 (b) A premium may not be charged for a personal property
9 title insurance policy or for another prescribed or approved form
10 at a rate different than the rate fixed and promulgated by the
11 commissioner.

12 (c) The commissioner may not limit the number of forms for
13 personal property title insurance if the forms meet the
14 requirements of this title.

15 Sec. 2751.052. FACTORS CONSIDERED IN FIXING PREMIUM RATES.

16 (a) In fixing premium rates, the commissioner shall consider all
17 relevant income and expenses of title insurance companies and title
18 insurance agents attributable to engaging in the business of
19 personal property title insurance in this state.

20 (b) The premium rates fixed by the commissioner must be
21 reasonable, adequate, not unfairly discriminatory,
22 nonconfiscatory, and not excessive.

23 Sec. 2751.053. HEARING REQUIRED. (a) Before a premium rate
24 may be fixed and forms adopted for personal property title
25 insurance under this chapter, the department must provide
26 reasonable notice and a hearing must be afforded to title insurance
27 companies, title insurance agents, and the public.

1 (b) A hearing under this section is subject to Subchapter B,
2 Chapter 40, and is handled as a contested case under Chapter 2001,
3 Government Code, in the manner prescribed by that subchapter.

4 Sec. 2751.054. COMMISSIONER ORDER. (a) Not later than the
5 90th day after the date of a hearing under Section 2751.053, the
6 commissioner shall issue an order prescribing the rates and forms
7 to be used in connection with personal property title insurance
8 policies under this chapter.

9 (b) The commissioner's order promulgating rates must be
10 based on the evidence adduced at the hearing.

11 Sec. 2751.055. REVISIONS TO RATES AND FORMS; HEARING. (a)
12 A title insurance company may apply to the department in the manner
13 prescribed by the commissioner for approval of a new or revised
14 personal property title insurance form or a change in a rate
15 associated with such a form. The commissioner may approve or
16 disapprove an application after a hearing conducted in the manner
17 prescribed by Section 2751.053.

18 (b) A hearing under this section must be conducted not later
19 than the 60th day after the date on which the department receives
20 the application.

21 (c) The commissioner shall approve or disapprove the
22 application not later than the 90th day after the date of the
23 hearing under Subsection (a).

24 [Sections 2751.056-2751.100 reserved for expansion]

25 SUBCHAPTER C. POWERS AND DUTIES OF INSURERS AND AGENTS

26 Sec. 2751.101. ISSUANCE OF POLICIES. A title insurance
27 company may issue to a secured party or another person that holds a

1 security interest in personal property or fixtures a personal
2 property title insurance policy in this state if the policy covers
3 personal property or fixtures of a debtor or a secured party and is
4 located in this state.

5 Sec. 2751.102. USE OF FORMS. (a) A title insurance company
6 or title insurance agent shall use the forms prescribed by the
7 commissioner in issuing to a secured party or another person that
8 holds a security interest in personal property or fixtures a
9 personal property title insurance policy.

10 (b) Unless authorized by rule adopted by the commissioner,
11 an insurer may not enter into a contract or other agreement
12 concerning a personal property title insurance policy if the
13 contract or other agreement is not expressed in the policy. A
14 contract or agreement prohibited by this subsection is void.

15 Sec. 2751.103. AGENTS. A title insurance agent or direct
16 operation may accept orders for insurance products authorized under
17 this chapter. The agent or direct operation shall act according to
18 the authority granted to the agent or direct operation by the title
19 insurance company issuing the product.

20 Sec. 2751.104. AGENT COMPENSATION. (a) The title
21 insurance company that issues a personal property title insurance
22 policy shall pay the title insurance agent that places the order for
23 the policy a total commission equal to 30 percent of the premium
24 charged for the personal property title insurance or personal
25 property title insurance product authorized under this chapter.

26 (b) Notwithstanding Subsection (a), a title insurance
27 company may not pay a commission to a title insurance agent for an

1 application for coverage that is placed with the title insurance
2 company directly.

3 (c) A commission paid under Subsection (a) does not
4 constitute a violation of Section 2502.051.

5 SECTION 2. Section 2501.002(a), Insurance Code, is amended
6 to read as follows:

7 (a) The purpose of this title is to completely regulate the
8 business of title insurance on real property and, as described by
9 Subtitle F, on interests in personal property, including the direct
10 issuance of policies and the reinsurance of any assumed risks, to:

11 (1) protect consumers and purchasers of title
12 insurance policies; and

13 (2) provide adequate and reasonable rates of return
14 for title insurance companies and title insurance agents.

15 SECTION 3. Section 2501.003(12), Insurance Code, is amended
16 to read as follows:

17 (12) "Title insurance" means:

18 (A) insurance that insures, guarantees, or
19 indemnifies an owner of real property or personal property, or
20 another interested in the real property or personal property,
21 against loss or damage resulting from:

22 (i) a lien or encumbrance on or defect in
23 the title to the real property or personal property; or

24 (ii) the invalidity or impairment of a lien
25 on the real property or personal property; [~~or~~]

26 (B) insurance that insures, guarantees, or
27 indemnifies a secured party or another person that holds a security

1 interest in personal property, as provided by Chapter 9, Business &
2 Commerce Code, against loss or damage resulting from:

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

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

7 (C) other insurance described by Section
8 2751.002(2); or

9 (D) any business that is substantially
10 equivalent to the insurance described by Paragraphs (A)-(C)
11 [~~Paragraph (A)~~] and is conducted in a manner designed to evade the
12 provisions of this title.

13 SECTION 4. Section 2501.005(a), Insurance Code, is amended
14 to read as follows:

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

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

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

22 (A) soliciting;

23 (B) title examination other than an examination
24 conducted by an attorney;

25 (C) closing the transaction other than a closing
26 conducted by an attorney;

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

1 (E) insuring and transacting matters arising out
2 of the contract after the contract is executed, including
3 reinsurance; ~~[or]~~

4 (3) makes a guaranty or warranty of a title search or a
5 title examination, or any component of a title search or title
6 examination, if the person is not the person who performs the search
7 or examination; or

8 (4) insures interests described by Section
9 2751.002(2).

10 SECTION 5. Section 2551.001(e), Insurance Code, is amended
11 to read as follows:

12 (e) This title does not regulate the practice of law by an
13 attorney. The actions of an attorney in examining title, in
14 examining records regarding an interest insured under Chapter 2751,
15 or in closing a real property or personal property transaction,
16 regardless of whether a title insurance policy is issued, does not
17 constitute the business of title insurance, unless the attorney
18 elects to be licensed as an escrow officer.

19 SECTION 6. Section 2551.051(a), Insurance Code, is amended
20 to read as follows:

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

23 (1) to compile and own or lease, or to acquire and own
24 or lease, records or abstracts of title to real property or
25 interests in real property in this state or other jurisdictions, to
26 insure titles to that real property or interests in that real
27 property, and to indemnify the owners of that real property, or the

1 holders of interests in or liens on that real property, against loss
2 or damage resulting from an encumbrance on or defect in the title to
3 the real property or interests in the real property; ~~and~~

4 (2) in transactions in which title insurance is to be
5 or is being issued, to supervise or approve the signing of legal
6 instruments affecting the interest to be insured ~~[real property~~
7 ~~titles]~~, disbursement of money, prorations, delivery of legal
8 instruments, closing of transactions, or issuance of commitments
9 for title insurance specifying the requirements for title insurance
10 and the defects in title necessary to be cured or corrected; and

11 (3) to issue personal property title insurance under
12 Chapter 2751.

13 SECTION 7. Section 2551.302, Insurance Code, is amended to
14 read as follows:

15 Sec. 2551.302. REQUIREMENTS FOR REINSURING POLICIES. A
16 title insurance company may reinsure any of its policies and
17 contracts issued on real property located in this state or on
18 policies and contracts issued in this state under Chapter 2751, if:

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

21 (2) the department first approves the form of the
22 reinsurance contract.

23 SECTION 8. Section 2551.304, Insurance Code, is amended to
24 read as follows:

25 Sec. 2551.304. ACCEPTANCE OF REINSURANCE. A title
26 insurance company may accept a reinsurance risk on real property
27 located in this state or on interests described by Section

1 2751.002(2) only from an authorized title insurance company.

2 SECTION 9. The State Office of Administrative Hearings
3 shall conduct the initial hearing required by Section 2751.053,
4 Insurance Code, as added by this Act, not later than November 1,
5 2007.

6 SECTION 10. This Act applies only to a title insurance
7 policy or contract delivered, issued for delivery, or renewed on or
8 after January 1, 2008. A policy or contract delivered, issued for
9 delivery, or renewed before January 1, 2008, is governed by the law
10 as it existed immediately before the effective date of this Act, and
11 that law is continued in effect for that purpose.

12 SECTION 11. This Act takes effect September 1, 2007.