

By: Carona

S.B. No. 1153

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 in, or
13 powers to transfer rights in, title with respect to personal
14 property or 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 2502.001;

6 (2) Sections 2502.051, 2502.053, and 2502.055;

7 (3) Chapter 2551, other than Section 2551.003;

8 (4) Chapter 2651;

9 (5) Chapter 2652;

10 (6) Section 2701.002;

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

13 (8) Section 2704.001, other than Subdivisions (1) and
14 (2) of that section;

15 (9) Section 2704.002; and

16 (10) Section 2704.004.

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

20 [Sections 2751.005-2751.050 reserved for expansion]

21 SUBCHAPTER B. RATES AND FORMS

22 Sec. 2751.051. FIXING AND PROMULGATING PREMIUM RATES AND
23 FORMS. (a) The commissioner shall, in the manner prescribed by
24 this subchapter:

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

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

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

7 (c) The commissioner may not limit the number of forms for
8 personal property title insurance if the forms meet the
9 requirements of this title.

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

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

15 (b) The premium rates fixed by the commissioner must be
16 reasonable, adequate, not unfairly discriminatory,
17 nonconfiscatory, and not excessive.

18 Sec. 2751.053. HEARING REQUIRED. (a) Before a premium
19 rate may be fixed and forms adopted for personal property title
20 insurance under this chapter, the department must provide
21 reasonable notice and a hearing must be afforded to title insurance
22 companies, title insurance agents, and the public.

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

26 Sec. 2751.054. COMMISSIONER ORDER. (a) Not later than the
27 90th day after the date of a hearing under Section 2751.053, the

1 commissioner shall issue an order prescribing the rates and forms
2 to be used in connection with personal property title insurance
3 policies under this chapter.

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

6 Sec. 2751.055. REVISIONS TO RATES AND FORMS; HEARING.

7 (a) A title insurance company may apply to the department in the
8 manner prescribed by the commissioner for approval of a new or
9 revised personal property title insurance form or a change in a rate
10 associated with such a form. The commissioner may approve or
11 disapprove an application after a hearing conducted in the manner
12 prescribed by Section 2751.053.

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

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

19 [Sections 2751.056-2751.100 reserved for expansion]

20 SUBCHAPTER C. POWERS AND DUTIES OF INSURERS AND AGENTS

21 Sec. 2751.101. ISSUANCE OF POLICIES. A title insurance
22 company may issue to a secured party or another person that holds a
23 security interest in personal property or fixtures a personal
24 property title insurance policy in this state if the policy covers
25 personal property or fixtures of a debtor or a secured party and is
26 located in this state.

27 Sec. 2751.102. USE OF FORMS. (a) A title insurance

1 company or title insurance agent shall use the forms prescribed by
2 the commissioner in issuing to a secured party or another person
3 that holds a security interest in personal property or fixtures a
4 personal property title insurance policy.

5 (b) Unless authorized by rule adopted by the commissioner,
6 an insurer may not enter into a contract or other agreement
7 concerning a personal property title insurance policy if the
8 contract or other agreement is not expressed in the policy. A
9 contract or agreement prohibited by this subsection is void.

10 Sec. 2751.103. AGENTS. A title insurance agent or direct
11 operation may accept orders for insurance products authorized under
12 this chapter. The agent or direct operation shall act according to
13 the authority granted to the agent or direct operation by the title
14 insurance company issuing the product.

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

21 (b) Notwithstanding Subsection (a), a title insurance
22 company may not pay a commission to a title insurance agent for an
23 application for coverage that is placed with the title insurance
24 company directly.

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

27 SECTION 2. Subsection (a), Section 2501.002, Insurance

1 Code, is amended to read as follows:

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

6 (1) protect consumers and purchasers of title
7 insurance policies; and

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

10 SECTION 3. Subdivision (12), Section 2501.003, Insurance
11 Code, is amended to read as follows:

12 (12) "Title insurance" means:

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

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

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

21 (B) to the extent that other provisions of this
22 title are applicable to that insurance under Section 2751.003:

23 (i) insurance that insures, guarantees, or
24 indemnifies a secured party or another person that holds a security
25 interest in personal property, as provided by Chapter 9, Business &
26 Commerce Code, against loss or damage resulting from:

27 (a) a lien, security interest, or

1 defect in the title to the personal property; or

2 (b) the invalidity or impairment of a
3 lien or security interest on the personal property; and

4 (ii) any other insurance described by
5 Section 2751.002(2); or

6 (C) any business that is substantially
7 equivalent to the insurance described by Paragraphs (A) and (B)
8 [~~Paragraph (A)~~] and is conducted in a manner designed to evade the
9 provisions of this title.

10 SECTION 4. Subsection (e), Section 2551.001, Insurance
11 Code, is amended 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 5. Subsection (a), Section 2551.051, Insurance
20 Code, is amended 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 6. 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 7. 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 8. 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 9. This Act applies only to a title insurance policy
7 or contract delivered, issued for delivery, or renewed on or after
8 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 10. This Act takes effect September 1, 2007.