

1-1 By: Carona S.B. No. 1153
1-2 (In the Senate - Filed March 5, 2007; March 14, 2007, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 March 28, 2007, reported favorably by the following vote: Yeas 8,
1-5 Nays 0; March 28, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the use of title insurance to insure certain interests
1-9 in personal property.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Title 11, Insurance Code, is amended by adding
1-12 Subtitle F to read as follows:

1-13 SUBTITLE F. TITLE INSURANCE FOR CERTAIN

1-14 PERSONAL PROPERTY INTERESTS

1-15 CHAPTER 2751. TITLE INSURANCE FOR PERSONAL

1-16 PROPERTY INTERESTS

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 2751.001. GENERAL DEFINITIONS. (a) The definitions
1-19 under Sections 2501.003(2)-(5), (7), (10), and (12)-(14) apply to
1-20 the regulation of title insurance under this chapter.

1-21 (b) In this subtitle, a term not defined under Subsection
1-22 (a) that is used in Chapter 9, Business & Commerce Code, has the
1-23 meaning assigned by that code.

1-24 Sec. 2751.002. DEFINITIONS OF PERSONAL PROPERTY AND
1-25 PERSONAL PROPERTY TITLE INSURANCE. In this subtitle:

1-26 (1) "Personal property" has the meaning assigned by
1-27 Section 1.04, Tax Code.

1-28 (2) "Personal property title insurance" means
1-29 coverage that insures:

1-30 (A) whether affirming or negating, one or more of
1-31 the elements of attachment, perfection, or priority of a security
1-32 interest in personal property or fixtures;

1-33 (B) the results, as to correctness,
1-34 completeness, or other criteria, of a search of:

1-35 (i) the filing office of the financing
1-36 statement record of a debtor; or

1-37 (ii) any other database, whether publicly
1-38 or privately maintained, such as court dockets, tax records, motor
1-39 vehicle department records, or the records of the Federal Aviation
1-40 Administration as to aircraft, the United States Coast Guard as to
1-41 vessels, or the United States Department of Transportation;

1-42 (C) the status of ownership of, rights in, or
1-43 powers to transfer rights in, title with respect to personal
1-44 property or fixtures;

1-45 (D) the effectiveness of the filing of a
1-46 financing statement with a filing office, or any other record with
1-47 any publicly maintained database or registry;

1-48 (E) the lien status of personal property or
1-49 fixtures, or compliance with Title 1, Business & Commerce Code, the
1-50 Uniform Commercial Code, international conventions such as the
1-51 United Nations Commission on International Trade Law (UNCITRAL), or
1-52 similar laws or regulations; or

1-53 (F) any of the matters covered by Paragraphs
1-54 (A)-(E) with respect to the laws of any other domestic or foreign
1-55 jurisdiction.

1-56 Sec. 2751.003. APPLICABILITY OF OTHER LAWS. (a) Except as
1-57 provided by Subsection (b), this code, other than this chapter,
1-58 does not apply to the business of personal property title
1-59 insurance.

1-60 (b) The following laws apply to the business of personal
1-61 property title insurance:

1-62 (1) Section 2502.001;

1-63 (2) Sections 2502.051, 2502.053, and 2502.055;

1-64 (3) Chapter 2551, other than Section 2551.003;

2-1 (4) Chapter 2651;
 2-2 (5) Chapter 2652;
 2-3 (6) Section 2701.002;
 2-4 (7) Chapter 2703, except to the extent of any conflict
 2-5 with Subchapter B of this chapter;
 2-6 (8) Section 2704.001, other than Subdivisions (1) and
 2-7 (2) of that section;
 2-8 (9) Section 2704.002; and
 2-9 (10) Section 2704.004.
 2-10 Sec. 2751.004. GENERAL RULES. The commissioner, in the
 2-11 manner prescribed by Subchapter A, Chapter 36, shall adopt rules as
 2-12 necessary to implement and enforce this chapter.
 2-13 [Sections 2751.005-2751.050 reserved for expansion]
 2-14 SUBCHAPTER B. RATES AND FORMS
 2-15 Sec. 2751.051. FIXING AND PROMULGATING PREMIUM RATES AND
 2-16 FORMS. (a) The commissioner shall, in the manner prescribed by
 2-17 this subchapter:
 2-18 (1) fix and promulgate the premium rates to be charged
 2-19 by a title insurance company or by a title insurance agent for
 2-20 personal property title insurance policies under this chapter; and
 2-21 (2) prescribe the forms to be used in connection with
 2-22 those policies.
 2-23 (b) A premium may not be charged for a personal property
 2-24 title insurance policy or for another prescribed or approved form
 2-25 at a rate different than the rate fixed and promulgated by the
 2-26 commissioner.
 2-27 (c) The commissioner may not limit the number of forms for
 2-28 personal property title insurance if the forms meet the
 2-29 requirements of this title.
 2-30 Sec. 2751.052. FACTORS CONSIDERED IN FIXING PREMIUM RATES.
 2-31 (a) In fixing premium rates, the commissioner shall consider all
 2-32 relevant income and expenses of title insurance companies and title
 2-33 insurance agents attributable to engaging in the business of
 2-34 personal property title insurance in this state.
 2-35 (b) The premium rates fixed by the commissioner must be
 2-36 reasonable, adequate, not unfairly discriminatory,
 2-37 nonconfiscatory, and not excessive.
 2-38 Sec. 2751.053. HEARING REQUIRED. (a) Before a premium
 2-39 rate may be fixed and forms adopted for personal property title
 2-40 insurance under this chapter, the department must provide
 2-41 reasonable notice and a hearing must be afforded to title insurance
 2-42 companies, title insurance agents, and the public.
 2-43 (b) A hearing under this section is subject to Subchapter B,
 2-44 Chapter 40, and is handled as a contested case under Chapter 2001,
 2-45 Government Code, in the manner prescribed by that subchapter.
 2-46 Sec. 2751.054. COMMISSIONER ORDER. (a) Not later than the
 2-47 90th day after the date of a hearing under Section 2751.053, the
 2-48 commissioner shall issue an order prescribing the rates and forms
 2-49 to be used in connection with personal property title insurance
 2-50 policies under this chapter.
 2-51 (b) The commissioner's order promulgating rates must be
 2-52 based on the evidence adduced at the hearing.
 2-53 Sec. 2751.055. REVISIONS TO RATES AND FORMS; HEARING.
 2-54 (a) A title insurance company may apply to the department in the
 2-55 manner prescribed by the commissioner for approval of a new or
 2-56 revised personal property title insurance form or a change in a rate
 2-57 associated with such a form. The commissioner may approve or
 2-58 disapprove an application after a hearing conducted in the manner
 2-59 prescribed by Section 2751.053.
 2-60 (b) A hearing under this section must be conducted not later
 2-61 than the 60th day after the date on which the department receives
 2-62 the application.
 2-63 (c) The commissioner shall approve or disapprove the
 2-64 application not later than the 90th day after the date of the
 2-65 hearing under Subsection (a).
 2-66 [Sections 2751.056-2751.100 reserved for expansion]
 2-67 SUBCHAPTER C. POWERS AND DUTIES OF INSURERS AND AGENTS
 2-68 Sec. 2751.101. ISSUANCE OF POLICIES. A title insurance
 2-69 company may issue to a secured party or another person that holds a

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

3-5 Sec. 2751.102. USE OF FORMS. (a) A title insurance
3-6 company or title insurance agent shall use the forms prescribed by
3-7 the commissioner in issuing to a secured party or another person
3-8 that holds a security interest in personal property or fixtures a
3-9 personal property title insurance policy.

3-10 (b) Unless authorized by rule adopted by the commissioner,
3-11 an insurer may not enter into a contract or other agreement
3-12 concerning a personal property title insurance policy if the
3-13 contract or other agreement is not expressed in the policy. A
3-14 contract or agreement prohibited by this subsection is void.

3-15 Sec. 2751.103. AGENTS. A title insurance agent or direct
3-16 operation may accept orders for insurance products authorized under
3-17 this chapter. The agent or direct operation shall act according to
3-18 the authority granted to the agent or direct operation by the title
3-19 insurance company issuing the product.

3-20 Sec. 2751.104. AGENT COMPENSATION. (a) The title
3-21 insurance company that issues a personal property title insurance
3-22 policy shall pay the title insurance agent that places the order for
3-23 the policy a total commission equal to 30 percent of the premium
3-24 charged for the personal property title insurance or personal
3-25 property title insurance product authorized under this chapter.

3-26 (b) Notwithstanding Subsection (a), a title insurance
3-27 company may not pay a commission to a title insurance agent for an
3-28 application for coverage that is placed with the title insurance
3-29 company directly.

3-30 (c) A commission paid under Subsection (a) does not
3-31 constitute a violation of Section 2502.051.

3-32 SECTION 2. Subsection (a), Section 2501.002, Insurance
3-33 Code, is amended to read as follows:

3-34 (a) The purpose of this title is to completely regulate the
3-35 business of title insurance on real property and, as described by
3-36 Subtitle F, on interests in personal property, including the direct
3-37 issuance of policies and the reinsurance of any assumed risks, to:

3-38 (1) protect consumers and purchasers of title
3-39 insurance policies; and

3-40 (2) provide adequate and reasonable rates of return
3-41 for title insurance companies and title insurance agents.

3-42 SECTION 3. Subdivision (12), Section 2501.003, Insurance
3-43 Code, is amended to read as follows:

3-44 (12) "Title insurance" means:

3-45 (A) insurance that insures, guarantees, or
3-46 indemnifies an owner of real property or personal property, or
3-47 another interested in the real property or personal property,
3-48 against loss or damage resulting from:

3-49 (i) a lien or encumbrance on or defect in
3-50 the title to the real property or personal property; or

3-51 (ii) the invalidity or impairment of a lien
3-52 on the real property or personal property; ~~or~~

3-53 (B) to the extent that other provisions of this
3-54 title are applicable to that insurance under Section 2751.003:

3-55 (i) insurance that insures, guarantees, or
3-56 indemnifies a secured party or another person that holds a security
3-57 interest in personal property, as provided by Chapter 9, Business &
3-58 Commerce Code, against loss or damage resulting from:

3-59 (a) a lien, security interest, or
3-60 defect in the title to the personal property; or

3-61 (b) the invalidity or impairment of a
3-62 lien or security interest on the personal property; and

3-63 (ii) any other insurance described by
3-64 Section 2751.002(2); or

3-65 (C) any business that is substantially
3-66 equivalent to the insurance described by Paragraphs (A) and (B)
3-67 [Paragraph (A)] and is conducted in a manner designed to evade the
3-68 provisions of this title.

3-69 SECTION 4. Subsection (e), Section 2551.001, Insurance

Code, is amended to read as follows:

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

SECTION 5. Subsection (a), Section 2551.051, Insurance Code, is amended to read as follows:

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

(1) to compile and own or lease, or to acquire and own or lease, records or abstracts of title to real property or interests in real property in this state or other jurisdictions, to insure titles to that real property or interests in that real property, and to indemnify the owners of that real property, or the holders of interests in or liens on that real property, against loss or damage resulting from an encumbrance on or defect in the title to the real property or interests in the real property; ~~and~~

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

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

SECTION 6. Section 2551.302, Insurance Code, is amended to read as follows:

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

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

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

SECTION 7. Section 2551.304, Insurance Code, is amended to read as follows:

Sec. 2551.304. ACCEPTANCE OF REINSURANCE. A title insurance company may accept a reinsurance risk on real property located in this state or on interests described by Section 2751.002(2) only from an authorized title insurance company.

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

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

SECTION 10. This Act takes effect September 1, 2007.

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