

By: Harris

S.B. No. 1824

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of title insurance; providing criminal and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 2501, Insurance Code, is amended to read as follows:

CHAPTER 2501. GENERAL PROVISIONS; OPERATION AND ADMINISTRATION OF
TITLE INSURANCE

SECTION 2. Chapter 2501, Insurance Code, is amended by designating Sections 2501.001 through 2501.008 as Subchapter A and adding a heading for Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

(2) provide adequate and reasonable rates of return for title insurance companies and title insurance agents; and

(3) promote the growth, availability, and solvency of entities or individuals willing to engage in the business of title

1 insurance in this state.

2 SECTION 4. Section 2501.003, Insurance Code, is amended by
3 adding Subdivisions (2-a), (2-b), and (3-a) to read as follows:

4 (2-a) "Commissioner" means the commissioner of title
5 insurance.

6 (2-b) "Commissioner of insurance" means the
7 commissioner of insurance of the department.

8 (3-a) "Division" means the division of title insurance
9 of the department.

10 SECTION 5. Section 2501.004, Insurance Code, is amended to
11 read as follows:

12 Sec. 2501.004. ABSTRACT PLANT; JOINT ABSTRACT PLANT
13 OPERATION. (a) For purposes of this title, the division
14 [~~department~~] shall define "abstract plant" and "joint abstract
15 plant operation."

16 (b) To provide for the safety and protection of
17 policyholders, the division [~~department~~] shall require that an
18 abstract plant:

- 19 (1) be geographically arranged;
20 (2) cover a period beginning not later than January 1,
21 1979, and be kept current; and
22 (3) be adequate for use in insuring titles, as
23 determined by the department.

24 SECTION 6. Chapter 2501, Insurance Code, is amended by
25 adding Subchapters B, C, D, and E to read as follows:

26 SUBCHAPTER B. GENERAL ADMINISTRATION; TITLE INSURANCE DIVISION

27 Sec. 2501.101. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT

1 OF INSURANCE; TITLE INSURANCE DIVISION. (a) Except as otherwise
2 provided by this title, the department is the state agency
3 designated to:

4 (1) issue licenses and enforce compliance with the
5 organization of title insurance companies under Subtitle B; and

6 (2) oversee the financial solvency of the title
7 insurance system in this state as provided by Subtitle C.

8 (b) The division of title insurance is established as a
9 division within the Texas Department of Insurance to administer and
10 regulate the title insurance business in this state as provided by
11 this title, including:

12 (1) the licensing and regulation of title insurance
13 professionals under Subtitle D;

14 (2) the regulation of the business of title insurance
15 under Subtitle E, including promulgating rates and forms; and

16 (3) the regulation of title insurance for personal
17 property interests under Subtitle F, including fixing and
18 promulgating premium rates and forms for personal property title
19 policies.

20 Sec. 2501.102. RELATIONSHIP BETWEEN COMMISSIONER OF
21 INSURANCE AND COMMISSIONER OF TITLE INSURANCE; SEPARATION OF
22 AUTHORITY; RULEMAKING. (a) The division is administered by the
23 commissioner of title insurance as provided by this
24 subchapter. Except as otherwise provided by this title, the
25 commissioner of title insurance shall exercise all executive
26 authority, including rulemaking authority, under this title.

27 (b) The commissioner of insurance shall develop and

1 implement policies that clearly separate the respective
2 responsibilities of the department and the division.

3 (c) The commissioner of insurance may provide advice,
4 research, and commentary regarding the adoption of rules by the
5 commissioner of title insurance under this subtitle.

6 Sec. 2501.103. ACTIVITIES OF THE STATE AUDITOR. (a) The
7 division is subject to audit by the state auditor in accordance with
8 Chapter 321, Government Code. The state auditor may audit:

9 (1) the structure and internal controls of the
10 division;

11 (2) the level and quality of service provided by the
12 division to employers, injured employees, insurance carriers,
13 self-insured governmental entities, and other participants;

14 (3) the implementation of statutory requirements by
15 the division;

16 (4) employee turnover;

17 (5) information management systems, including public
18 access to nonconfidential information;

19 (6) the adoption and implementation of administrative
20 rules by the commissioner; and

21 (7) determinations of the occurrence of
22 administrative violations and the penalties for those violations.

23 (b) Nothing in this section limits the authority of the
24 state auditor under Chapter 321, Government Code.

25 Sec. 2501.104. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT.

26 (a) The division is administratively attached to the department.

27 (b) The department shall provide the staff and facilities

1 necessary to enable the division to perform its duties under this
2 title, including:

3 (1) administrative assistance and services, including
4 budget planning and purchasing;

5 (2) personnel and financial services; and

6 (3) computer equipment and support.

7 (c) The commissioner and the commissioner of insurance may
8 enter into agreements as necessary to implement this title.

9 Sec. 2501.105. DUTIES OF DIVISION; SINGLE POINT OF CONTACT.

10 (a) In addition to other duties required under this title, the
11 division shall:

12 (1) regulate and administer the business of title
13 insurance in this state;

14 (2) ensure that the provisions of this title and other
15 laws regarding title insurance are executed; and

16 (3) adopt or promulgate rates, rating rules, policy
17 forms, manual rules, and other procedural rules.

18 (b) The commissioner of title insurance shall on a regular
19 basis, but not less often than every three years conduct a public
20 hearing to consider and adopt new rules.

21 Sec. 2501.106. COMPOSITION OF DIVISION. (a) The division
22 is composed of the commissioner and other officers and employees as
23 required to efficiently implement:

24 (1) this title;

25 (2) other title insurance laws of this state; and

26 (3) other laws that grant jurisdiction or that are
27 otherwise applicable to the division or the commissioner; and

1 (4) enforcement of this title, other title insurance
2 laws and regulations implementing those laws, and other laws that
3 grant jurisdiction or that are otherwise applicable to the division
4 or the commissioner.

5 (b) Enforcement activity under Subsection (a)(4) shall be
6 by employees within the division or by nonaffiliated attorneys in
7 the private practice of law.

8 Sec. 2501.107. CHIEF EXECUTIVE. (a) The commissioner is
9 the division's chief executive and chief administrative
10 officer. The commissioner shall administer and enforce this
11 title, other title insurance laws of this state, and other laws that
12 grant jurisdiction to or that are otherwise applicable to the
13 division or the commissioner.

14 (b) The commissioner has the powers and duties vested in the
15 division by this title and other title insurance laws of this state.

16 (c) Division staff shall report to the commissioner.

17 Sec. 2501.108. APPOINTMENT; TERM. (a) The governor, with
18 the advice and consent of the senate, shall appoint the
19 commissioner. The commissioner serves a two-year term that
20 expires on February 1 of each odd-numbered year.

21 (b) The governor shall appoint the commissioner without
22 regard to the race, color, disability, sex, religion, age, or
23 national origin of the appointee.

24 Sec. 2501.109. QUALIFICATIONS. The commissioner must:

25 (1) be a competent and experienced administrator;

26 (2) be well informed and qualified in the field of
27 title insurance;

1 (3) have at least five years of experience as an
2 executive in the administration of business or government or as a
3 practicing attorney, real estate agent, or certified public
4 accountant; and

5 (4) not have been an employee of the department or the
6 office of public insurance counsel.

7 Sec. 2501.110. INELIGIBILITY FOR PUBLIC OFFICE. The
8 commissioner is ineligible to be a candidate for a public elective
9 office in this state unless the commissioner has resigned and the
10 governor has accepted the resignation.

11 Sec. 2501.111. COMPENSATION. The commissioner is entitled
12 to compensation as provided by the General Appropriations Act.

13 Sec. 2501.112. GROUNDS FOR REMOVAL. (a) It is a ground for
14 removal from office that the commissioner:

15 (1) does not have at the time of appointment the
16 qualifications required by Section 2501.109;

17 (2) does not maintain during service as commissioner
18 the qualifications required by Section 2501.109;

19 (3) violates a prohibition established by Sections
20 2501.113, 2501.115, 2501.117, or 2501.118; or

21 (4) cannot because of illness or incapacity discharge
22 the commissioner's duties for a substantial part of the
23 commissioner's term.

24 (b) The validity of an action of the commissioner or the
25 division is not affected by the fact that it is taken when a ground
26 for removal of the commissioner exists.

27 Sec. 2501.113. PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION.

1 (a) The commissioner or an employee of the division may not accept
2 a gift, a gratuity, or entertainment from a person having an
3 interest in a matter or proceeding pending before the division.

4 (b) A violation of Subsection (a) is an administrative
5 violation and constitutes a ground for removal from office or
6 termination of employment.

7 Sec. 2501.114. CIVIL LIABILITY OF COMMISSIONER. The
8 commissioner is not liable in a civil action for an act performed in
9 good faith in the execution of duties as commissioner.

10 Sec. 2501.115. CONFLICT OF INTEREST. (a) In this section,
11 "Texas trade association" means a cooperative and voluntarily
12 joined statewide association of business or professional
13 competitors in this state designed to assist its members and its
14 industry or profession in dealing with mutual business or
15 professional problems and in promoting their common interest.

16 (b) A person may not serve as commissioner and may not be a
17 division employee employed in a "bona fide executive,
18 administrative, or professional capacity" as that phrase is used
19 for purposes of establishing an exemption to the overtime
20 provisions of the federal Fair Labor Standards Act of 1938 (29
21 U.S.C. Section 201 et seq.) if:

22 (1) the person is an officer, employee, or paid
23 consultant of a Texas trade association in the field of title
24 insurance; or

25 (2) the person's spouse is an officer, manager, or paid
26 consultant of a Texas trade association in the field of title
27 insurance.

1 Sec. 2501.116. PROHIBITION ON CERTAIN EMPLOYMENT OR
2 REPRESENTATION. (a) A former commissioner or former employee of
3 the division involved in hearing cases under this title may not
4 represent a person before the division or a court in a matter:

5 (1) in which the former commissioner or employee was
6 personally involved while associated with the division; or

7 (2) that was within the former commissioner's or
8 employee's official responsibilities while the former commissioner
9 or employee was associated with the division.

10 (b) The prohibition under Subsection (a)(2) applies until
11 the:

12 (1) second anniversary of the date the former
13 commissioner ceased to serve as the commissioner; and

14 (2) first anniversary of the date the former
15 employee's employment with the division ceased.

16 (c) The prohibition under Subsection (a)(1) applies to a
17 current commissioner or employee of the division while the
18 commissioner or employee is involved in hearing cases under this
19 title and at any time thereafter.

20 (d) A person commits an offense if the person violates this
21 section. An offense under this section is a Class A misdemeanor.

22 Sec. 2501.117. LOBBYING ACTIVITIES. A person may not serve
23 as commissioner or act as general counsel to the commissioner if the
24 person is required to register as a lobbyist under Chapter 305,
25 Government Code, because of the person's activities for
26 compensation related to the operation of the department or the
27 division.

1 Sec. 2501.118. TRAINING PROGRAM FOR COMMISSIONER. (a) Not
2 later than the 90th day after the date the commissioner takes
3 office, the commissioner shall complete a training program that
4 complies with this section.

5 (b) The training program must provide the commissioner with
6 information regarding:

7 (1) the legislation that created the division;

8 (2) the programs operated by the division;

9 (3) the role and functions of the division;

10 (4) the rules of the commissioner of insurance
11 relating to the division, with an emphasis on the rules that relate
12 to disciplinary and investigatory authority;

13 (5) the current budget for the division;

14 (6) the results of the most recent formal audit of the
15 division;

16 (7) the requirements of:

17 (A) the open meetings law, Chapter 551,
18 Government Code;

19 (B) the public information law, Chapter 552,
20 Government Code;

21 (C) the administrative procedure law, Chapter
22 2001, Government Code; and

23 (D) other laws relating to public officials,
24 including conflict-of-interest laws; and

25 (8) any applicable ethics policies adopted by the
26 division or the Texas Ethics Commission.

27 Sec. 2501.119. GENERAL POWERS AND DUTIES OF COMMISSIONER.

1 (a) The commissioner shall conduct the daily operations of the
2 division and otherwise implement division policy.

3 (b) The commissioner or the commissioner's designee may:

4 (1) investigate misconduct;

5 (2) hold hearings, except that all rate matters shall
6 be heard by the commissioner;

7 (3) issue subpoenas to compel the attendance of
8 witnesses and the production of documents;

9 (4) administer oaths;

10 (5) take testimony directly or by deposition or
11 interrogatory;

12 (6) assess and enforce penalties established under
13 this title;

14 (7) enter appropriate orders as authorized by this
15 title;

16 (8) institute an action in the division's name to
17 enjoin a violation of this title;

18 (9) initiate an action to intervene in a judicial
19 proceeding;

20 (10) prescribe the form, manner, and procedure for the
21 transmission of information to the division;

22 (11) correct clerical errors in the entry of orders;
23 and

24 (12) exercise other powers and perform other duties as
25 necessary to implement and enforce this title.

26 Sec. 2501.120. PUBLIC INTEREST INFORMATION. (a) The
27 commissioner shall prepare information of public interest

1 describing the functions of the division and the procedures by
2 which complaints are filed with and resolved by the division.

3 (b) The commissioner shall make the information available
4 to the public and appropriate state agencies.

5 (c) The commissioner by rule shall ensure that each division
6 form, standard letter, and brochure under this title:

7 (1) is written in plain language;

8 (2) is in a readable and understandable format; and

9 (3) complies with all applicable requirements
10 relating to minimum readability requirements.

11 (d) The division shall make informational materials
12 described by this section available in English and Spanish.

13 Sec. 2501.121. COMPLAINT INFORMATION. (a) The
14 commissioner shall:

15 (1) adopt rules regarding the filing of a complaint
16 under this title against an individual or entity subject to
17 regulation by the division under this title; and

18 (2) ensure that information regarding the complaint
19 process is available on the division's Internet website.

20 (b) The rules adopted under this section must, at a minimum:

21 (1) ensure that the division clearly defines by rule
22 the method for filing a complaint; and

23 (2) define what constitutes a frivolous complaint
24 under this title.

25 (c) The division shall develop and post on the division's
26 Internet website:

27 (1) a simple standardized form for filing complaints

1 under this title; and

2 (2) information regarding the complaint filing
3 process.

4 (d) The division shall keep an information file about each
5 written complaint filed with the division under this title that is
6 unrelated to a specific title insurance claim, including a
7 complaint regarding the administration of the title insurance
8 system. The information must include:

9 (1) the date the complaint is received;

10 (2) the name of the complainant;

11 (3) the subject matter of the complaint;

12 (4) a record of all persons contacted in relation to
13 the complaint;

14 (5) a summary of the results of the review or
15 investigation of the complaint; and

16 (6) for complaints for which the division took no
17 action, an explanation of the reason the complaint was closed
18 without action.

19 (e) For each written complaint that is unrelated to a
20 specific title insurance claim that the division has authority to
21 resolve, the division shall provide to the person filing the
22 complaint and the person about whom the complaint is made
23 information about the division's policies and procedures under this
24 title relating to complaint investigation and resolution. The
25 division, at least quarterly and until final disposition of the
26 complaint, shall notify those persons about the status of the
27 complaint unless the notice would jeopardize an undercover

1 investigation.

2 (f) The commissioner shall create a schedule of fines for
3 late filings of statistical reports, trust fund audits, guaranty
4 fees, and escrow officer applications. The schedule of fines shall
5 be administered by the division. A fine may not exceed \$50,000
6 unless a licensee has been found guilty of the same offense at least
7 three times over a period of years prescribed by the commissioner.
8 Subsequent offenses shall be handled through the normal complaint
9 process described by this section.

10 Sec. 2501.122. PRIORITIES FOR COMPLAINT INVESTIGATIONS.

11 (a) The division shall assign priorities to complaint
12 investigations under this title based on risk. In developing
13 priorities under this section, the division shall develop a
14 formal, risk-based complaint investigation system that considers:

15 (1) the severity of the alleged violation;

16 (2) whether the alleged violator showed continued or
17 wilful noncompliance; and

18 (3) whether an order of the commissioner has been
19 violated.

20 (b) The commissioner may develop additional risk-based
21 criteria as determined necessary.

22 Sec. 2501.123. PUBLIC PARTICIPATION. (a) The
23 commissioner shall develop and implement policies that provide the
24 public with a reasonable opportunity to appear before the division
25 and to speak on issues under the general jurisdiction of the
26 division.

27 (b) The division shall comply with federal and state laws

1 related to program and facility accessibility.

2 (c) In addition to the policies implemented under
3 Subsection (a), the commissioner shall prepare and maintain a
4 written plan that describes how a person who does not speak English
5 may be provided reasonable access to the division's programs and
6 services.

7 Sec. 2501.124. ADOPTION OF RULES. The commissioner shall
8 adopt rules as necessary for the implementation and enforcement of
9 this title.

10 Sec. 2501.125. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS.
11 The division may accept gifts, grants, and donations as provided by
12 rules adopted by the commissioner.

13 Sec. 2501.126. FEES. In addition to fees established by
14 this title, the commissioner shall set reasonable fees for services
15 provided to persons requesting services from the division.

16 Sec. 2501.127. RECOMMENDATIONS TO LEGISLATURE. (a) The
17 commissioner shall consider and recommend to the legislature
18 changes to this title relating to title insurance.

19 (b) The commissioner shall forward the recommended changes
20 to the legislature not later than December 1 of
21 each even-numbered year.

22 Sec. 2501.128. LEGISLATIVE OVERSIGHT. The legislature may
23 adopt requirements relating to legislative oversight of the
24 division and the title insurance system of this state. The
25 division shall comply with any requirements adopted by the
26 legislature under this section.

27 Sec. 2501.129. ADVISORY COMMITTEES. The commissioner may

1 appoint advisory committees as the commissioner considers
2 necessary.

3 Sec. 2501.130. ANNUAL REPORT. (a) The commissioner shall
4 prepare annually a complete and detailed written report accounting
5 for all funds received and disbursed by the commission during the
6 preceding fiscal year.

7 (b) The report must meet the requirements applicable to
8 financial reporting that are provided under the General
9 Appropriations Act.

10 Sec. 2501.131. SANCTIONS. (a) Except as provided by
11 Subsection (b), the division may impose sanctions against any
12 person regulated by the division under this title.

13 (b) Only the commissioner may impose:

14 (1) a sanction suspending for more than 30 days or
15 revoking a license, certification, or permit required for a
16 licensed title agent or escrow officer in the field of title
17 insurance; or

18 (2) an administrative penalty on a licensed title
19 insurance company, title insurance agent, direct operation, or
20 escrow officer for violation of requirements relating to rates,
21 rules, or forms promulgated by the commissioner.

22 (c) The commissioner of insurance may impose sanctions for
23 violations of other titles of this code.

24 Sec. 2501.132. COOPERATION WITH STATE OFFICE OF
25 ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief
26 administrative law judge of the State Office of Administrative
27 Hearings by rule shall adopt a memorandum of understanding

1 governing administrative procedure law hearings under this title
2 conducted by the State Office of Administrative Hearings in the
3 manner provided for a contested case hearing under Chapter 2001,
4 Government Code. The memorandum of understanding shall establish
5 the rules for discovery, qualification and cross-examination of
6 witnesses, and the types and quality of data and information
7 presented.

8 (b) In a case in which a rate hearing is conducted in
9 accordance with this title, the administrative law judge who
10 conducts the hearing for the State Office of Administrative
11 Hearings shall propose a decision to the commissioner for final
12 consideration not later than the 60th day after the close of the
13 hearing. A proposal for decision of the administrative law judge
14 becomes final unless the proposal for decision is changed by the
15 commissioner on or before the 60th day after the final proposal for
16 decision is received by the commissioner.

17 (c) In a contested case in which a sanction is conducted in
18 accordance with this title, the administrative law judge who
19 conducts the contested case hearing for the State Office of
20 Administrative Hearings shall propose a decision to the
21 commissioner for final consideration not later than the 60th day
22 after the close of the hearing. A proposal for decision of the
23 administrative law judge becomes final unless the proposal for
24 decision is changed by the commissioner on or before the 90th day
25 after the proposal for decision is received by the commissioner.

26 Sec. 2501.133. GENERAL DUTIES; FUNDING. (a) The division
27 shall perform the regulatory and licensing functions for title

1 agents, direct operations, and escrow officers of the title
2 insurance system of this state.

3 (b) The department shall perform the licensing functions
4 for title insurance companies.

5 (c) The operations of the division and the department under
6 this section are funded through the maintenance fee assessed under
7 Chapter 271.

8 Sec. 2501.134. APPEAL OF COMMISSIONER ACTION. (a) A
9 company or person qualified or seeking to qualify under this title
10 who is aggrieved by an action of the commissioner, including any
11 action against the company or person, may file an appeal of the
12 commissioner's action in a district court in Travis County.

13 (b) The appeal must be filed not later than the 30th day
14 after the date the commissioner issues the order or ruling, except
15 that if the order or ruling is directed against the company or
16 person, regardless of whether it is directed against any other
17 party, the company or person has 30 days after the date of receipt
18 of official notice of the commissioner's action to review the
19 action.

20 (c) An appeal under this section is subject to the same
21 standard of review as an appeal under Section 36.203.

22 SUBCHAPTER C. PERSONNEL

23 Sec. 2501.201. APPOINTMENTS. (a) Subject to the General
24 Appropriations Act or other law, the commissioner shall appoint
25 deputies, assistants, and other personnel as necessary to carry out
26 the powers and duties of the commissioner and the division under
27 this title, other title insurance laws of this state, and other laws

1 that grant jurisdiction or that are otherwise applicable to the
2 division or the commissioner.

3 (b) A person appointed under Subsection (a) must have the
4 professional, administrative, and title insurance experience
5 necessary to qualify for the position to which the person is
6 appointed.

7 Sec. 2501.202. DIVISION OF RESPONSIBILITIES. The
8 commissioner shall develop and implement policies that clearly
9 define the respective responsibilities of the commissioner and the
10 staff of the division.

11 Sec. 2501.203. CAREER LADDER; ANNUAL PERFORMANCE
12 EVALUATIONS. (a) The commissioner or the commissioner's designee
13 shall develop an intra-agency career ladder program that addresses
14 opportunities for mobility and advancement for employees within the
15 division. The program shall require intra-agency postings of all
16 positions concurrently with any public posting.

17 (b) The commissioner or the commissioner's designee shall
18 develop a system of annual performance evaluations that are based
19 on documented employee performance. All merit pay for division
20 employees must be based on the system established under this
21 subsection.

22 Sec. 2501.204. EQUAL EMPLOYMENT OPPORTUNITY POLICY
23 STATEMENT. (a) The commissioner or the commissioner's designee
24 shall prepare and maintain a written policy statement to ensure
25 implementation of a program of equal employment opportunity under
26 which all personnel transactions are made without regard to race,
27 color, disability, sex, religion, age, or national origin. The

1 policy statement must include:

2 (1) personnel policies, including policies related to
3 recruitment, evaluation, selection, appointment, training, and
4 promotion of personnel that are in compliance with Chapter 21,
5 Labor Code;

6 (2) a comprehensive analysis of the division workforce
7 that meets federal and state guidelines;

8 (3) procedures by which a determination may be made of
9 significant underuse in the division workforce of all persons for
10 whom federal or state guidelines encourage a more equitable
11 balance; and

12 (4) reasonable methods to appropriately address those
13 areas of underuse.

14 (b) A policy statement prepared under this section must:

15 (1) cover an annual period;

16 (2) be updated annually;

17 (3) be reviewed by the civil rights division of the
18 Texas Workforce Commission for compliance with Subsection (a)(1);
19 and

20 (4) be filed with the Texas Workforce Commission.

21 (c) The Texas Workforce Commission shall deliver a biennial
22 report to the legislature based on the information received under
23 Subsection (b). The report may be submitted separately or as part
24 of other biennial reports to the legislature.

25 SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DIVISION AND

26 COMMISSIONER

27 Sec. 2501.301. DELEGATION OF RIGHTS AND DUTIES. Except as

1 expressly provided by this subtitle, the division may not delegate
2 the rights and duties imposed by this subchapter.

3 Sec. 2501.302. QUALIFICATIONS AND STANDARDS OF CONDUCT
4 INFORMATION. The commissioner or the commissioner's designee shall
5 provide to division employees, as often as the commissioner or
6 designee considers necessary, information regarding their:

7 (1) qualifications for office or employment under this
8 subtitle; and

9 (2) responsibilities under applicable law relating to
10 standards of conduct for state officers or employees.

11 SUBCHAPTER E. RECORDS AND EMPLOYEE INFORMATION

12 Sec. 2501.401. DIVISION RECORDS. (a) The commissioner is
13 the custodian of the division's records and shall perform the
14 duties of a custodian required by law, including providing copies
15 and the certification of records.

16 (b) The division shall comply with records retention
17 schedules provided under Section 441.185, Government Code.

18 (c) A record maintained by the division may be preserved in
19 any format permitted by Chapter 441, Government Code, and rules
20 adopted by the Texas State Library and Archives Commission under
21 that chapter.

22 (d) The division may charge a reasonable fee for making
23 available for inspection any of its information that contains
24 confidential information that must be redacted before the
25 information is made available. However, when a request for
26 information is for the inspection of 10 or fewer pages and a copy of
27 the information is not requested, the division may charge only the

1 cost of making a copy of the page from which confidential
2 information must be redacted. The fee for access to information
3 under Chapter 552, Government Code, shall be in accordance with the
4 rules of the attorney general that prescribe the method for
5 computing the charge for copies under that chapter.

6 SECTION 7. Subchapter A, Chapter 2502, Insurance Code, is
7 amended by adding Section 2502.0021 to read as follows:

8 Sec. 2502.0021. COVERAGE FOR MINERALS NOT REQUIRED.

9 (a) An insurance company may not be required to insure against
10 loss or damage by reason of severance of minerals from the surface
11 estate. An insurance company may, provided that its underwriting
12 standards are met, generally except or otherwise specifically
13 except, on a commitment for title insurance or a policy of title
14 insurance, to one or more instruments that purport to reserve or
15 transfer all or part of the mineral estate, but such exceptions do
16 not provide title insurance coverage as to the condition or
17 ownership of the excepted mineral estate.

18 (b) The commissioner may not adopt a rule or form requiring
19 insurance as to ownership of minerals.

20 SECTION 8. Section 2551.003, Insurance Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) The commissioner of insurance, after consultation with
23 the commissioner, may adopt and enforce rules on the insolvency of
24 entities engaged in the business of title insurance.

25 SECTION 9. Section 2551.152, Insurance Code, is amended to
26 read as follows:

27 Sec. 2551.152. ANNUAL STATEMENT. (a) Not later than March

1 1 of each year, each title insurance company shall file with the
2 commissioner of insurance a verified statement.

3 (b) The statement must be in a form required by the
4 commissioner of insurance and must:

5 (1) provide a statement of the business engaged in by
6 the title insurance company during the preceding year; and

7 (2) describe the condition of the company's affairs on
8 December 31 of the preceding year.

9 SECTION 10. Subsection (a), Section 2551.258, Insurance
10 Code, is amended to read as follows:

11 (a) The commissioner of insurance may:

12 (1) reevaluate the adequacy of the statutory premium
13 reserves required under Section 2551.253; and

14 (2) based on an actuarial review, change by order the
15 amount of the statutory premium reserve required of any domestic
16 title insurer or all domestic title insurers.

17 SECTION 11. Subsection (a), Section 2551.351, Insurance
18 Code, is amended to read as follows:

19 (a) A foreign or domestic corporation forfeits any right to
20 engage in business in this state if the corporation:

21 (1) issues any form of title insurance policy, or any
22 other adopted or approved form, on real property in this state other
23 than a form prescribed by the department;

24 (2) charges any premium rate on an owner, mortgagee,
25 or other title insurance policy, or on any other adopted or approved
26 form, on real property in this state other than a premium rate
27 prescribed by the commissioner; or

1 (3) otherwise engages in the business of title
2 insurance in relation to real property in this state on a form or
3 for a premium rate not prescribed by the division [~~department~~] or
4 commissioner.

5 SECTION 12. Section 2551.352, Insurance Code, is amended to
6 read as follows:

7 Sec. 2551.352. REVOCATION OF PERMIT AND FORFEITURE OF
8 CHARTER. (a) A domestic corporation engaged in the business of
9 title insurance that violates this title is subject to:

10 (1) revocation by the commissioner of insurance of the
11 corporation's permit; and

12 (2) forfeiture of the corporation's charter.

13 (b) A foreign corporation engaged in the business of title
14 insurance that violates this title is subject to revocation by the
15 commissioner of insurance of the corporation's permit.

16 SECTION 13. Subsections (a) and (c), Section 2551.353,
17 Insurance Code, are amended to read as follows:

18 (a) If the commissioner of insurance determines that a
19 domestic or foreign corporation that holds a certificate of
20 authority to engage in business in this state has violated this
21 title, the commissioner shall notify the company that the
22 commissioner of insurance intends to revoke the company's
23 certificate of authority on the expiration of the 30-day period
24 following the date actual notice is delivered or mailed under this
25 section.

26 (c) If a company receiving notice under this section does
27 not fully comply before the expiration of the period described by

1 Subsection (a), the commissioner of insurance shall revoke the
2 company's certificate of authority.

3 SECTION 14. Subsections (a) and (b), Section 2551.354,
4 Insurance Code, are amended to read as follows:

5 (a) A company qualified or seeking to qualify under this
6 title and aggrieved by an action of the commissioner of insurance,
7 including any action against the company, may file an appeal of the
8 commissioner of insurance's [~~commissioner's~~] action in a district
9 court in Travis County.

10 (b) The appeal must be filed not later than the 30th day
11 after the date the commissioner of insurance issues the order or
12 ruling, except that if the order or ruling is directed against the
13 company, whether or not directed against any other party, the
14 company has 30 days after the date of receipt of official notice of
15 the commissioner of insurance's [~~commissioner's~~] action to review
16 the action.

17 SECTION 15. Subsection (a), Section 2552.202, Insurance
18 Code, is amended to read as follows:

19 (a) An attorney's title insurance company shall certify to
20 the department and the division the name and address of each title
21 attorney appointed by the attorney's title insurance company.

22 SECTION 16. Subdivisions (5) and (6), Section 2602.003,
23 Insurance Code, are amended to read as follows:

24 (5) "Impaired agent" means a title agent or direct
25 operation that is designated by the commissioner of insurance as an
26 impaired agent and is:

27 (A) placed by a court in this state or another

1 state under an order of supervision, conservatorship,
2 rehabilitation, or liquidation;

3 (B) placed under an order of supervision or
4 conservatorship under Chapter 441;

5 (C) placed under an order of rehabilitation or
6 liquidation under Chapter 443; or

7 (D) otherwise found by a court of competent
8 jurisdiction to be insolvent or otherwise unable to pay obligations
9 as they come due.

10 (6) "Impaired title insurance company" means a title
11 insurance company that is designated by the commissioner of
12 insurance as an impaired title insurance company and is:

13 (A) placed by a court in this state or another
14 state under an order of supervision, conservatorship,
15 rehabilitation, or liquidation;

16 (B) placed under an order of supervision or
17 conservatorship under Chapter 441;

18 (C) placed under an order of rehabilitation or
19 liquidation under Chapter 443; or

20 (D) otherwise found by a court of competent
21 jurisdiction to be insolvent or otherwise unable to pay obligations
22 as they come due.

23 SECTION 17. Subsection (a), Section 2602.008, Insurance
24 Code, is amended to read as follows:

25 (a) Liability does not exist and a cause of action does not
26 arise against any of the following persons for a good faith action
27 or omission of the person in exercising the person's powers and

1 performing the person's duties under this chapter:

2 (1) the commissioner, the commissioner of insurance,
3 or the [~~commissioner's~~] representative of the commissioner or the
4 commissioner of insurance;

5 (2) the association or the association's agent or
6 employee;

7 (3) a title insurance company or the company's agent or
8 employee;

9 (4) a board member; and

10 (5) a special deputy receiver or the special deputy
11 receiver's agent or employee.

12 SECTION 18. Sections 2602.010 and 2602.011, Insurance Code,
13 are amended to read as follows:

14 Sec. 2602.010. RULES. The commissioner of insurance shall
15 adopt reasonable rules as necessary to implement and supplement
16 this chapter and its purposes.

17 Sec. 2602.011. INFORMATION PROVIDED BY AND TO COMMISSIONER.

18 (a) The commissioner of insurance shall notify the association and
19 the commissioner of the existence of an impaired title insurance
20 company or impaired agent not later than the third day after the
21 date on which the commissioner of insurance gives notice of the
22 designation of impairment to the impaired agent or impaired title
23 insurance company. The association is entitled to a copy of any
24 complaint seeking an order of receivership with a finding of
25 insolvency against a title insurance company at the time the
26 complaint is filed with a court.

27 (b) The commissioner of insurance shall notify the board

1 when the commissioner of insurance receives a report from the
2 commissioner of insurance or other analogous officer of another
3 state that indicates that a title insurance company has been
4 designated impaired in another state. The report to the board must
5 contain all significant details of the action taken or the report
6 received.

7 (c) The commissioner of insurance shall report to the board
8 and the commissioner when the commissioner of insurance has
9 reasonable cause to believe from a completed or continuing
10 examination of any title insurance company that the company may be
11 an impaired title insurance company. The board may use this
12 information in performing its duties under this chapter. The board
13 shall keep the report and the information contained in the report
14 confidential until it is made public by the commissioner of
15 insurance or other lawful authority.

16 (d) On the board's request, the commissioner of insurance
17 shall provide the association with a statement of the net direct
18 written premiums of each title insurance company.

19 (e) The commissioner of insurance may require that the
20 association notify the insureds of the impaired title insurance
21 company and any other interested party of the designation of
22 impairment and of the person's rights under this chapter.
23 Notification by publication in a newspaper of general circulation
24 is sufficient notice under this section.

25 SECTION 19. Subsections (a), (b), and (d), Section 2602.12,
26 Insurance Code, are amended to read as follows:

27 (a) A title insurance company may appeal to the commissioner

1 of insurance an action or ruling of the association relating to an
2 assessment.

3 (b) An action or ruling of the commissioner of insurance
4 under this chapter may be appealed as provided by Subchapter D,
5 Chapter 36.

6 (d) Venue in a suit relating to an action or ruling under
7 this chapter is in Travis County. Each party to the action may
8 appeal, and the appeal is at once returnable to the appellate court
9 and has precedence over all cases of a different character pending
10 before the court. The commissioner of insurance or association is
11 not required to give an appeal bond in an appeal of a cause of action
12 arising under this chapter.

13 SECTION 20. Subsection (a), Section 2602.052, Insurance
14 Code, is amended to read as follows:

15 (a) The association's powers are exercised through a board
16 of directors consisting of nine individuals appointed by the
17 commissioner of insurance.

18 SECTION 21. Subsection (d), Section 2602.054, Insurance
19 Code, is amended to read as follows:

20 (d) The commissioner of insurance shall appoint an
21 individual to fill a vacancy on the board for the unexpired term.

22 SECTION 22. Subsection (c), Section 2602.102, Insurance
23 Code, is amended to read as follows:

24 (c) If the association does not submit a suitable amendment
25 to the plan of operation, the commissioner after notice and hearing
26 may adopt reasonable rules as necessary or advisable to implement
27 this chapter. A rule adopted by the commissioner continues in

1 effect unless [~~until~~] modified by the commissioner of insurance or
2 superseded by an amendment submitted by the association and
3 approved by the commissioner of insurance.

4 SECTION 23. Subsections (b) and (c), Section 2602.103,
5 Insurance Code, are amended to read as follows:

6 (b) On the [~~commissioner's~~] request of the commissioner of
7 insurance, the association shall retain one or more persons to:

8 (1) audit and review agent escrow and trust accounts,
9 financial condition, and compliance with applicable statutes and
10 rules; and

11 (2) report to the commissioner of insurance on the
12 accounts, condition, and compliance.

13 (c) A person retained under Subsection (b) acts solely under
14 the direction of and as assigned by the commissioner of insurance.

15 SECTION 24. Subsection (a), Section 2602.111, Insurance
16 Code, is amended to read as follows:

17 (a) The plan of operation may provide that, on approval of
18 the board and the commissioner of insurance, a power or duty of the
19 association may be delegated to a corporation or other organization
20 that:

21 (1) performs or will perform in two or more states
22 functions similar to those of the association or its equivalent;
23 and

24 (2) provides protection not substantially less
25 favorable and effective than that provided by this chapter.

26 SECTION 25. Sections 2602.113, 2602.114, and 2602.115,
27 Insurance Code, are amended to read as follows:

1 Sec. 2602.113. DETECTION AND PREVENTION OF IMPAIRMENT.

2 (a) The board may make recommendations to the commissioner of
3 insurance and the commissioner for detecting and preventing title
4 insurance company or agent impairments. The board shall advise and
5 counsel with the commissioner and the commissioner of insurance on
6 matters relating to the solvency of title insurance companies and
7 agents.

8 (b) The board may report and make recommendations to the
9 commissioner and the commissioner of insurance relating to any
10 matter germane to the solvency, liquidation, rehabilitation, or
11 conservation of a title insurance company or agent. A report or
12 recommendation under this subsection is not a public document until
13 a title insurance company is designated impaired.

14 (c) The board shall notify the commissioner of insurance of
15 any information indicating that a title insurance company or agent
16 may be unable or potentially unable to fulfill its contractual
17 obligations and shall request a meeting with the commissioner. The
18 board may request appropriate investigation and action by the
19 commissioner or the commissioner of insurance. The commissioner
20 and the commissioner of insurance may investigate and act as the
21 commissioner and the commissioner of insurance consider
22 [~~considers~~] appropriate.

23 Sec. 2602.114. MEETING OF BOARD ON IMPAIRED TITLE INSURANCE
24 COMPANY OR AGENT. (a) The commissioner of insurance:

25 (1) shall call a meeting of the board when the
26 commissioner of insurance determines that a title insurance company
27 or agent is insolvent or impaired; and

1 (2) may call a meeting of the board when the
2 commissioner of insurance determines that a title insurance company
3 or agent is in danger of becoming insolvent or impaired.

4 (b) The meeting is not open to the public. Only board
5 members, the commissioner of insurance, and persons the
6 commissioner of insurance authorizes may attend the meeting.

7 (c) The commissioner of insurance may require an officer,
8 director, or employee of the title insurance company or agent to
9 appear before the board for conference or to give testimony.

10 (d) At the meeting the commissioner of insurance may
11 disclose to the board information that the commissioner of
12 insurance possesses and may disclose department records, including
13 an examination report or a preliminary report from an examiner that
14 relates to the title insurance company or agent.

15 (e) A board member may not disclose information received in
16 the meeting unless authorized by the commissioner of insurance or
17 required as witness in court. A board member and the meeting are
18 subject to the confidentiality standard imposed on an examiner
19 under Sections 401.105 and 401.106, except that a bond is not
20 required of a board member.

21 Sec. 2602.115. ASSOCIATION AND BOARD ADVICE AND ASSISTANCE.

22 (a) On the [~~commissioner's~~] request of the commissioner of
23 insurance, the board shall attend hearings before the commissioner
24 of insurance and meet with and advise the commissioner of insurance
25 or the receiver or the conservator appointed by the commissioner of
26 insurance on matters relating to:

27 (1) the affairs of an impaired title insurance company

1 or agent;

2 (2) action that the commissioner of insurance,
3 receiver, or conservator may take to best protect the interest of
4 holders of covered claims against the company or agent; and

5 (3) the marshalling of assets.

6 (b) On the [~~commissioner's~~] request of the commissioner of
7 insurance, the association may assist and advise the commissioner
8 of insurance concerning rehabilitation, payment of claims,
9 continuation of coverage, or the performance of other contractual
10 obligations of an impaired title insurance company or agent.

11 SECTION 26. Section 2602.117, Insurance Code, is amended to
12 read as follows:

13 Sec. 2602.117. BOARD REPORT AT CONCLUSION OF IMPAIRMENT.
14 At the conclusion of a title insurance company or agent impairment
15 in which the association exercised its powers or performed its
16 duties under this chapter, the board shall prepare, from
17 information available to the association, and submit to the
18 commissioner of insurance a report on the history and causes of the
19 impairment.

20 SECTION 27. Section 2602.154, Insurance Code, is amended to
21 read as follows:

22 Sec. 2602.154. ENFORCEMENT OF FEE. (a) After notice and
23 opportunity for hearing, the commissioner of insurance may suspend
24 or revoke the certificate of authority or license to engage in
25 business in this state of a title insurance company or agent that
26 does not comply with this subchapter.

27 (b) The commissioner of insurance shall adopt rules that

1 implement the program created under this subchapter.

2 SECTION 28. Subsection (a), Section 2602.201, Insurance
3 Code, is amended to read as follows:

4 (a) If the commissioner of insurance determines that a title
5 insurance company or agent has become impaired, the association
6 shall promptly estimate the amount of additional money needed to
7 supplement the assets of the impaired title insurance company or
8 agent to pay all covered claims and administrative expenses.

9 SECTION 29. Section 2602.204, Insurance Code, is amended to
10 read as follows:

11 Sec. 2602.204. EXEMPTION FOR IMPAIRED TITLE INSURANCE
12 COMPANY. A title insurance company is exempt from assessment
13 during the period beginning on the date the commissioner of
14 insurance designates the company as an impaired title insurance
15 company and ending on the date the commissioner of insurance
16 determines that the company is no longer an impaired title
17 insurance company.

18 SECTION 30. Subsections (b) and (d), Section 2602.209,
19 Insurance Code, are amended to read as follows:

20 (b) On failure of a title insurance company to pay an
21 assessment when due, the commissioner of insurance may either:

22 (1) suspend or revoke, after notice and hearing, the
23 company's certificate of authority to engage in business in this
24 state; or

25 (2) assess an administrative penalty as provided by
26 Chapter 84 in an amount not to exceed the greater of five percent of
27 the unpaid assessment each month or \$100 each month.

1 (d) The commissioner of insurance may collect an assessment
2 on behalf of the association through a suit brought for that
3 purpose.

4 SECTION 31. Sections 2602.451 and 2602.452, Insurance Code,
5 are amended to read as follows:

6 Sec. 2602.451. APPLICABILITY. This subchapter applies, at
7 the [~~commissioner's~~] discretion of the commissioner of insurance
8 and regardless of whether there are covered claims against an
9 agent, to any agent that is designated by the commissioner of
10 insurance as an impaired agent.

11 Sec. 2602.452. ACTIONS FOR CERTAIN AGENTS. (a) The
12 commissioner of insurance may direct the association, at the
13 association's expense and on behalf of an impaired agent, to:

- 14 (1) close real estate transactions;
15 (2) disburse escrow funds;
16 (3) record documents; and
17 (4) issue final title insurance policies.

18 (b) The association may employ or retain a person in
19 accordance with Section 2602.103(a).

20 SECTION 32. Subsection (a), Section 2602.453, Insurance
21 Code, is amended to read as follows:

22 (a) On the direction of the commissioner of insurance under
23 Section 2602.452, the association may implement any direction made
24 by the commissioner of insurance and may access all books, records,
25 accounts, networks, and electronic document storage and management
26 systems as necessary to implement the [~~commissioner's~~] direction.

27 SECTION 33. Section 2651.007, Insurance Code, is amended by

1 adding Subsections (d) and (e) to read as follows:

2 (d) The department may not delay or deny a license renewal
3 because of a pending enforcement action against a license
4 applicant.

5 (e) A license renewal will be deemed granted 60 days after
6 the completed renewal application is received by the department if
7 no reason is given to the applicant for license denial under Section
8 2651.301.

9 SECTION 34. Section 2651.203, Insurance Code, is amended by
10 amending Subsection (b) and adding Subsection (c) to read as
11 follows:

12 (b) The department shall prescribe the form of the
13 disclosure required by this section. A form that applies to a title
14 insurance company shall require only the name of the president, the
15 name of an executive vice president, or the names of a senior vice
16 president, the treasurer, and the secretary.

17 (c) A title insurance agent or direct operation shall not
18 later than the 15th day after receiving a license from the
19 department, provide written notice of the license to all title
20 insurance agents and direct operations in the county for which the
21 agent or operation is licensed and all adjoining counties. The
22 notice shall also be provided to all title insurance companies
23 licensed in this state. The department may prescribe the form of
24 any notice required by this section.

25 SECTION 35. Section 2651.301, Insurance Code, is amended to
26 read as follows:

27 Sec. 2651.301. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY

1 ACTION. (a) The department may deny an application for a license
2 or discipline a title insurance agent or direct operation under
3 Sections 4005.102, 4005.103, and 4005.104 if the department
4 determines that the applicant or license holder has:

5 (1) wilfully violated this title;

6 (2) intentionally made a material misstatement in the
7 license application;

8 (3) obtained or attempted to obtain the license by
9 fraud or misrepresentation;

10 (4) misappropriated or converted to the applicant's or
11 license holder's own use or illegally withheld money belonging to a
12 title insurance company, an insured, or another person;

13 (5) been guilty of fraudulent or dishonest practices;

14 (6) materially misrepresented the terms and
15 conditions of a title insurance policy or contract; or

16 (7) failed to maintain:

17 (A) a separate and distinct accounting of escrow
18 funds; and

19 (B) an escrow bank account or accounts separate
20 and apart from all other accounts.

21 (b) The department shall notify a licensee or any applicant
22 for licensure of any enforcement action not later than the 20th day
23 after the initiation of the action.

24 (c) If the applicant or licensee responds to the notification
25 and the department fails to take further action or to respond within
26 60 days after the applicant's or licensee's response, the
27 enforcement is deemed dismissed for lack of prosecution.

1 SECTION 36. Subchapter G, Chapter 2651, Insurance Code, is
2 amended by adding Section 2651.303 to read as follows:

3 Sec. 2651.303. LICENSE APPROVAL. (a) The department may
4 not delay or deny license approval because of a pending enforcement
5 action against a license applicant.

6 (b) A license will be deemed granted 60 days after the
7 completed application form is received by the department if no
8 reason is given to the applicant for license denial under Section
9 2651.301.

10 SECTION 37. Section 2652.201, Insurance Code, is amended by
11 adding Subsections (c) and (d) to read as follows:

12 (c) The department may not delay nor deny a license
13 application or renewal because of a pending enforcement action
14 against the applicant.

15 (d) A license application or renewal will be deemed granted
16 60 days after the completed renewal application is received by the
17 department if no reason is given to the applicant for license denial
18 under Section 2651.301.

19 SECTION 38. Subchapter E, Chapter 2652, Insurance Code, is
20 amended by adding Section 2652.203 to read as follows:

21 Sec. 2652.203. NOTICE OF DISCIPLINARY ACTION. (a) The
22 department shall notify a licensee or any applicant for licensure
23 of any enforcement action not later than the 20th day after the
24 initiation of the action.

25 (b) If the applicant or licensee responds to the notification
26 and the department fails to take further action or respond within 60
27 days after the applicant's or licensee's response, the enforcement

1 is deemed dismissed for want of prosecution.

2 SECTION 39. Section 2703.152, Insurance Code, is amended by
3 amending Subsection (b) and adding Subsections (c), (d), and (e) to
4 read as follows:

5 (b) The premium rates fixed by the commissioner must ~~[be]~~:

6 (1) be just and reasonable as to the public; ~~[and]~~

7 (2) be nonconfiscatory as to title insurance companies
8 and title insurance agents;

9 (3) provide a reasonable margin of profit for title
10 insurance companies and title insurance agents; and

11 (4) not be excessive, inadequate, or unfairly
12 discriminatory as to insureds, title insurance companies, or title
13 insurance agents under this chapter or as described by this
14 section.

15 (c) A rate is excessive if the rate is likely to produce a
16 long-term profit that is unreasonably high in relation to the
17 insurance coverage provided.

18 (d) A rate is inadequate if:

19 (1) the rate is insufficient to sustain projected
20 losses and expenses to which the rate applies; and

21 (2) continued use of the rate:

22 (A) would endanger the solvency of a title
23 insurance company or title insurance agent using the rate; or

24 (B) would have the effect of substantially
25 lessening competition or creating a monopoly in a market.

26 (e) A rate is unfairly discriminatory if the rate:

27 (1) is not based on sound actuarial principles;

1 (2) does not bear a reasonable relationship to the
2 expected loss and expense experience among risks; or

3 (3) is based wholly or partly on the race, creed,
4 color, ethnicity, or national origin of the policyholder or an
5 insured.

6 SECTION 40. Section 2703.153, Insurance Code, is amended by
7 amending Subsection (b) and adding Subsection (h) to read as
8 follows:

9 (b) The information must be submitted in the form prescribed
10 by the division [~~department~~]. The division may not request
11 personal or corporate federal tax returns.

12 (h) Information to be used in the setting of rates shall be
13 obtained only through the statistical information required by rule
14 to be kept and reported to the commissioner on an annual basis.
15 When new or different information is added to the statistical
16 report, the application of the information shall be prospective
17 only and shall not be used until at least three years after the date
18 the information has been collected by the department.

19 SECTION 41. Subsection (d), Section 2703.202, Insurance
20 Code, is amended to read as follows:

21 (d) Notwithstanding Subsection (c), at the written request
22 of a title insurance company or a trade association that represents
23 at least 25 title insurance agents or title insurance companies
24 doing business in this state that is filed with the division before
25 the 31st day after the date notice is sent [~~the public insurance~~
26 ~~counsel~~], a public hearing held under Subsection (a) or under
27 Section 2703.206 may [~~must~~] be conducted by the commissioner as a

1 contested case hearing under Subchapters C through H and Subchapter
2 Z, Chapter 2001, Government Code. The commissioner shall conduct a
3 hearing at least every fifth year after January 1, 2012.

4 SECTION 42. The heading to Section 2703.205, Insurance
5 Code, is amended to read as follows:

6 Sec. 2703.205. PHASES OF [~~BIENNIAL~~] HEARING.

7 SECTION 43. Section 2703.205, Insurance Code, is amended by
8 amending Subsections (a) and (e) and adding Subsection (h) to read
9 as follows:

10 (a) The [~~biennial~~] hearing consists of:

11 (1) a rulemaking phase to consider rules, forms,
12 endorsements, and related matters that do not have rate
13 implications; and

14 (2) a ratemaking phase to consider fixing of premium
15 rates and other matters that have rate implications.

16 (e) The ratemaking phase of the hearing shall be conducted
17 as a contested case in accordance with Chapter 2001, Government
18 Code, and subject to the agreement between the commissioner and the
19 State Office of Administrative Hearings.

20 (h) If the hearing is held before the State Office of
21 Administrative Hearings, the administrative law judge shall render
22 a proposal for decision in the ratemaking phase of the hearing not
23 later than the 60th day after the date the hearing is finally closed
24 unless the date is extended for an additional 60-day period with the
25 consent of all parties.

26 SECTION 44. Subchapter E, Chapter 2703, Insurance Code, is
27 amended by adding Section 2703.2055 to read as follows:

1 Sec. 2703.2055. COMMISSIONER ACTION. (a) Not later than
2 the 60th day after the date a proposal for decision is filed with
3 the division under this subchapter, the commissioner shall either:

4 (1) issue an order or decision approving the proposal
5 for decision, if the commissioner determines that the proposed rate
6 complies with the requirements of this chapter and the commissioner
7 provides notice to all parties of the decision or order as provided
8 by Section 2001.142, Government Code; or

9 (2) if the commissioner determines that the proposed
10 rate does not comply with the requirements of this chapter, the
11 commissioner shall amend the proposal for decision, issue an order
12 or decision with a rate, findings, or conclusions of law that comply
13 with the requirements of this chapter, and provide notice to all
14 parties of the decision or order as provided by Section 2001.142,
15 Government Code.

16 (b) The commissioner may amend findings of fact in a
17 proposal for decision under Subsection (a) only if the commissioner
18 determines that:

19 (1) a particular finding of fact is based on no
20 reliable or credible evidence in the records as a whole; or

21 (2) a particular finding of fact is affected by error
22 of law.

23 (c) If a proposal for decision has not been approved or
24 disapproved by the commissioner before the expiration of
25 the 60-day period described by Subsection (a), the rate, findings,
26 and conclusions of law in the proposal for decision shall be
27 considered final and may not be changed by the commissioner without

1 the written consent of all parties. On written motion filed by a
2 party with the State Office of Administrative Hearings that a
3 proposal for decision has not been accepted or amended as provided
4 by Subsection (a), the office shall provide notification of the
5 decision or order as provided by Section 2001.142, Government Code,
6 and that the decision may become final under Section 2001.144,
7 Government Code.

8 SECTION 45. (a) Except as provided by Section 46 of this
9 Act, the commissioner of title insurance of the Texas Department of
10 Insurance shall adopt rules implementing the applicable provisions
11 of Title 11, Insurance Code, as amended by this Act, not later than
12 June 1, 2012.

13 (b) Rules in effect under Title 11, Insurance Code, on the
14 effective date of this Act remain in effect until superseded by
15 rules adopted under Subsection (a) of this section.

16 SECTION 46. (a) Not later than June 1, 2012, the
17 commissioner of title insurance of the Texas Department of
18 Insurance shall conduct a hearing to allow interested parties to
19 make recommendations regarding rules to be adopted under the
20 memorandum of understanding required under Section 2501.132,
21 Insurance Code, as added by this Act.

22 (b) The commissioner of title insurance of the Texas
23 Department of Insurance and the chief administrative law judge of
24 the State Office of Administrative Hearings shall enter into the
25 memorandum of understanding described by Subsection (a) of this
26 section as soon as practicable after the date the hearing is
27 conducted as provided by that subsection.

1 SECTION 47. This Act takes effect January 1, 2012.