

By: Hall

S.B. No. 372

A BILL TO BE ENTITLED

AN ACT

relating to regulation of title insurance.

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

ARTICLE 1. TITLE INSURANCE PREMIUMS AND OTHER TITLE INSURANCE  
REGULATION

SECTION 1.01. Section 2251.002, Insurance Code, is amended by adding Subdivision (9) to read as follows:

(9) "Title insurance" has the meaning assigned by Section 2501.003.

SECTION 1.02. Sections 2251.003(a) and (b), Insurance Code, are amended to read as follows:

(a) This subchapter and Subchapters B, C, and D apply to:

(1) an insurer to which Article 5.13 applies, other than the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association; ~~and~~

(2) except as provided by Subsection (c), a Lloyd's plan, reciprocal or interinsurance exchange, and county mutual insurance company with respect to the lines of insurance described by Subsection (b); and

(3) a title insurance company.

(b) This subchapter and Subchapters B, C, and D apply to all lines of the following kinds of insurance written under an insurance policy or contract issued by an insurer authorized to

1 engage in the business of insurance in this state:

2 (1) general liability insurance;

3 (2) residential and commercial property insurance,  
4 including farm and ranch insurance and farm and ranch owners  
5 insurance;

6 (3) personal and commercial casualty insurance,  
7 except as provided by Section 2251.004;

8 (4) medical professional liability insurance;

9 (5) fidelity, guaranty, and surety bonds other than  
10 criminal court appearance bonds;

11 (6) personal umbrella insurance;

12 (7) personal liability insurance;

13 (8) guaranteed auto protection (GAP) insurance;

14 (9) involuntary unemployment insurance;

15 (10) financial guaranty insurance;

16 (11) inland marine insurance;

17 (12) rain insurance;

18 (13) hail insurance on farm crops;

19 (14) personal and commercial automobile insurance;

20 (15) multi-peril insurance; ~~and~~

21 (16) identity theft insurance issued under Chapter  
22 706; and

23 (17) title insurance.

24 SECTION 1.03. Section 2251.052, Insurance Code, is amended  
25 by adding Subsection (f) to read as follows:

26 (f) In setting rates for title insurance, an insurer shall  
27 also consider all relevant income and expenses of title insurance

1 agents attributable to engaging in the business of title insurance  
2 in this state.

3 SECTION 1.04. Section 2703.003, Insurance Code, is amended  
4 to read as follows:

5 Sec. 2703.003. PAYMENT OF PREMIUMS; DIVISION OF PREMIUM.

6 (a) The premium for a title insurance policy or for another form  
7 prescribed or approved by the commissioner shall be paid in the due  
8 and ordinary course of business.

9 (b) Notwithstanding any other law, the commissioner may not  
10 regulate the division of premium between a title insurance company  
11 and a title insurance agent.

12 SECTION 1.05. The heading to Subchapter D, Chapter 2703,  
13 Insurance Code, is amended to read as follows:

14 SUBCHAPTER D. [~~FIXING AND PROMULGATING~~] PREMIUM RATES; DATA  
15 REPORTING

16 SECTION 1.06. Section 2703.151, Insurance Code, is amended  
17 to read as follows:

18 Sec. 2703.151. [~~FIXING AND PROMULGATING~~] PREMIUM RATES.

19 (a) Except as provided by Subsection (b), [~~the commissioner shall~~  
20 ~~fix and promulgate the~~] premium rates [~~to be charged by a title~~  
21 ~~insurance company or by a title insurance agent~~] for title  
22 insurance policies are governed by Subchapters A, B, C, and D,  
23 Chapter 2251 [~~or for other forms prescribed or approved by the~~  
24 ~~commissioner~~].

25 (b) A title insurance company is not required to file [~~The~~  
26 ~~commissioner may not fix or promulgate~~] the premium rates for  
27 reinsurance between title insurance companies. Title insurance

1 companies may establish the premium rates in amounts to which the  
2 companies agree.

3 (c) Except for a premium charged for reinsurance, a premium  
4 may not be charged for a title insurance policy or for another  
5 prescribed or approved form at a rate different than the rate filed  
6 with [~~fixed and promulgated by~~] the commissioner under Chapter  
7 2251.

8 SECTION 1.07. The heading to Section 2703.153, Insurance  
9 Code, is amended to read as follows:

10 Sec. 2703.153. DATA COLLECTION [~~OF DATA FOR FIXING PREMIUM~~  
11 ~~RATES~~]; ANNUAL STATISTICAL REPORT.

12 SECTION 1.08. Sections 2703.153(a), (c), and (d), Insurance  
13 Code, are amended to read as follows:

14 (a) Each title insurance company and title insurance agent  
15 engaged in the business of title insurance in this state shall  
16 annually submit to the department, as required by the department  
17 [~~to collect data to use to fix premium rates~~], a statistical report  
18 containing information relating to:

- 19 (1) loss experience;  
20 (2) expense of operation; and  
21 (3) other material matters.

22 (c) Not less frequently than once every five years, the  
23 commissioner shall evaluate the information required under this  
24 section to determine whether the department needs additional or  
25 different information or no longer needs certain information [~~to~~  
26 ~~promulgate rates. If the department requires a title insurance~~  
27 ~~company or title insurance agent to include new or different~~

1 ~~information in the statistical report, that information may be~~  
2 ~~considered by the commissioner in fixing premium rates if the~~  
3 ~~information collected is reasonably credible for the purposes for~~  
4 ~~which the information is to be used].~~

5 (d) A title insurance company or a title insurance agent  
6 aggrieved by a department requirement concerning the submission of  
7 information may bring a suit in a district court in Travis County  
8 alleging that the request for information:

9 (1) is unduly burdensome; or

10 (2) is not a request for information material to a  
11 ~~[fixing and promulgating premium rates or another]~~ matter that may  
12 be the subject of the periodic hearing and is not a request  
13 reasonably designed to lead to the discovery of that information.

14 SECTION 1.09. The heading to Section 2751.051, Insurance  
15 Code, is amended to read as follows:

16 Sec. 2751.051. ~~[FIXING AND PROMULGATING]~~ PREMIUM RATES AND  
17 FORMS.

18 SECTION 1.10. Section 2751.051, Insurance Code, is amended  
19 by amending Subsections (a) and (b) and adding Subsection (a-1) to  
20 read as follows:

21 (a) The commissioner shall, in the manner prescribed by this  
22 subchapter, [+

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

27 ~~[(2)]~~ prescribe the policies and forms to be used for

1 personal property title insurance [~~in connection with those~~  
2 ~~policies~~].

3 (a-1) Premium rates for personal property title insurance  
4 are governed by Subchapters A, B, C, and D, Chapter 2251.

5 (b) A premium may not be charged for a personal property  
6 title insurance policy or for another prescribed or approved form  
7 at a rate different than the rate filed with [~~fixed and promulgated~~  
8 ~~by~~] the commissioner under Chapter 2251.

9 ARTICLE 2. CONFORMING AMENDMENTS

10 SECTION 2.01. Section 2501.003(8), Insurance Code, is  
11 amended to read as follows:

12 (8) "Premium" means the premium rates charged for a  
13 title insurance policy or other form prescribed or approved  
14 [~~promulgated~~] by the commissioner [~~under Subchapters D and E,~~  
15 ~~Chapter 2703,~~] and includes a charge for:

16 (A) title examination and closing the  
17 transaction, regardless of whether the examination or closing is  
18 performed by an attorney; and

19 (B) issuing the policy or form.

20 SECTION 2.02. Section 2551.204(d), Insurance Code, is  
21 amended to read as follows:

22 (d) The amount, handling, and distribution of any reserves  
23 required under Subsection (c)(2) are subject to the control and  
24 discretion of the department and are reviewable in judicial  
25 proceedings governed by rules applicable to review of rates under  
26 Section 2703.202, as it existed before its repeal by the 85th  
27 Legislature, Regular Session, 2017 [~~Subchapters D and E, Chapter~~

1 ~~2703~~].

2 SECTION 2.03. Section ~~2551.351~~(a), Insurance Code, is  
3 amended to read as follows:

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

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

9 (2) charges any premium rate on an owner, mortgagee,  
10 or other title insurance policy, or on any other adopted or approved  
11 form, on real property in this state other than a premium rate filed  
12 under Chapter ~~2251~~ [~~prescribed by the commissioner~~]; or

13 (3) otherwise engages in the business of title  
14 insurance in relation to real property in this state on a form [~~or~~  
15 ~~for a premium rate~~] not prescribed by the department or  
16 commissioner or for a premium rate not filed under Chapter ~~2251~~.

17 SECTION 2.04. Section ~~2552.007~~, Insurance Code, is amended  
18 to read as follows:

19 Sec. ~~2552.007~~. OTHER PREMIUM OR FEE PROHIBITED. Attorney's  
20 title insurance may not be issued for any premium or fee other than  
21 the applicable [~~prescribed~~] premium charged at the rate filed with  
22 the commissioner under Chapter ~~2251~~ [~~as provided by Subchapters D~~  
23 and E, Chapter ~~2703~~].

24 SECTION 2.05. Section ~~2602.210~~(a), Insurance Code, is  
25 amended to read as follows:

26 (a) A title insurance company is entitled to recover in its  
27 rates for the succeeding calendar year amounts paid in assessments

1 not to exceed one percent of the company's net direct written  
2 premiums and may include those amounts, less any refund, as an  
3 expense of operation in a rate filing made under Chapter 2251. [~~In~~  
4 ~~promulgating or establishing rates the commissioner shall consider~~  
5 ~~assessments and refunds of assessments and shall adjust the rates~~  
6 ~~to allow for recovery under this subsection.~~]

7 SECTION 2.06. Section 2651.012(b), Insurance Code, is  
8 amended to read as follows:

9 (b) The unencumbered assets required under this section are  
10 reserves for contingencies. The reserves must be deducted from  
11 premiums for purposes of proceedings conducted with respect to  
12 premium rates [~~under Subchapter D, Chapter 2703~~]. The reserves may  
13 only be spent or released:

14 (1) as permitted by the commissioner if the agent is  
15 declared impaired;

16 (2) if the agent merges or consolidates with another  
17 agent who maintains the amount of unencumbered assets that would be  
18 required for the survivor of the merger or consolidation;

19 (3) if the agent surrenders the agent's license under  
20 Section 2651.201;

21 (4) if the agent is liquidated; or

22 (5) if the agent's license is revoked.

23 SECTION 2.07. The heading to Subchapter E, Chapter 2703,  
24 Insurance Code, is amended to read as follows:

25 SUBCHAPTER E. PROCEDURES REGARDING [~~PREMIUM RATES,~~] POLICY  
26 FORMS [~~7~~] AND OTHER RELATED MATTERS

27 SECTION 2.08. Section 2703.203, Insurance Code, is amended



1 to read as follows:

2           Sec. 2703.203. PERIODIC HEARING. The commissioner shall  
3 hold a public hearing not earlier than July 1 after the fifth  
4 anniversary of the closing of a hearing held under this chapter to  
5 consider [~~adoption of premium rates and other~~] matters relating to  
6 regulating the business of title insurance that an association,  
7 title insurance company, or title insurance agent [~~, or member of~~  
8 ~~the public admitted as a party under Section 2703.204~~] requests to  
9 be considered or that the commissioner determines necessary to  
10 consider.

11           SECTION 2.09. Section 2703.206, Insurance Code, is amended  
12 to read as follows:

13           Sec. 2703.206. COMMISSIONER AUTHORITY TO HOLD HEARINGS AS  
14 NECESSARY. At any time, the commissioner may order a public hearing  
15 to consider [~~adoption of premium rates and other~~] matters relating  
16 to regulating the business of title insurance as the commissioner  
17 determines necessary or proper.

18           SECTION 2.10. Section 2703.207, Insurance Code, is amended  
19 to read as follows:

20           Sec. 2703.207. NOTICE OF CERTAIN HEARINGS. Not later than  
21 the 60th day before the date of a hearing under Section [~~2703.202~~]  
22 2703.203[~~7~~] or 2703.206, notice of the hearing and of each item to  
23 be considered at the hearing shall be:

24           (1) sent directly to all parties to the previous  
25 hearing conducted under Section [~~2703.202~~] 2703.203[~~7~~] or  
26 2703.206, if the hearing was conducted as a contested case hearing;  
27 and

1 (2) published in the Texas Register and on the  
2 department's Internet website.

3 SECTION 2.11. Section 2703.208(a), Insurance Code, is  
4 amended to read as follows:

5 (a) An addition or amendment to the Basic Manual of Rules,  
6 Rates[~~r~~] and Forms for the Writing of Title Insurance in the State  
7 of Texas may be proposed and adopted by reference by publishing  
8 notice of the proposal or adoption by reference in the Texas  
9 Register.

10 SECTION 2.12. Section 2751.053(a), Insurance Code, is  
11 amended to read as follows:

12 (a) Before the commissioner may adopt [~~a premium rate may be~~  
13 ~~fixed and~~] forms [~~adopted~~] for personal property title insurance  
14 under this chapter, the department must provide reasonable notice  
15 and a hearing must be afforded to title insurance companies, title  
16 insurance agents, and the public.

17 SECTION 2.13. Section 2751.054, Insurance Code, is amended  
18 to read as follows:

19 Sec. 2751.054. COMMISSIONER ORDER. [~~(a)~~] Not later than  
20 the 90th day after the date of a hearing under Section 2751.053, the  
21 commissioner shall issue an order prescribing the [~~rates and~~] forms  
22 to be used in connection with personal property title insurance  
23 policies under this chapter.

24 [~~(b) The commissioner's order promulgating rates must be~~  
25 ~~based on the evidence adduced at the hearing.~~]

26 SECTION 2.14. The heading to Section 2751.055, Insurance  
27 Code, is amended to read as follows:

1           Sec. 2751.055. REVISIONS TO [~~RATES AND~~] FORMS; HEARING.

2           SECTION 2.15. Section 2751.055(a), Insurance Code, is  
3 amended to read as follows:

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

10                                   ARTICLE 3. REPEALER

11           SECTION 3.01. Sections 2703.152, 2703.201, 2703.202,  
12 2703.204, and 2751.052, Insurance Code, are repealed.

13                                   ARTICLE 4. TRANSITION; EFFECTIVE DATE

14           SECTION 4.01. The changes in law made by this Act affecting  
15 premium rates for title insurance apply only to a premium rate in  
16 effect on and after January 1, 2018. A premium rate in effect  
17 before January 1, 2018, is governed by the law as it existed  
18 immediately before the effective date of this Act, and that law is  
19 continued in effect for that purpose.

20           SECTION 4.02. This Act takes effect September 1, 2017.