

SUBJECT: Changes to regulation of the title insurance industry.

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Eiland, Nash, Sheets, Taylor, Torres, Vo, Walle

0 nays

1 absent — Hancock

WITNESSES: For — Merritt Hopson, Texas Land Title Association, Fidelity National Title Group; (*Registered, but did not testify*: Mark Borskey, First American Title; James Dudley, Central Texas Land Titles, Inc.; Randy M Lee, Stewart Title Guaranty Co., Brian Pitman, Independent Title Agents of Texas; Glen Cochran; Suzanne Frossard; Alex Harris; Guy Jackson; Dawn Moore; Phyllis Mulder; Jack Rattikin III)

Against — None

On — (*Registered, but did not testify*: Robert Carter, Texas Department of Insurance, David Muckerheide, Texas Department of Insurance)

BACKGROUND: The Texas Department of Insurance (TDI) licenses and regulates title insurance agents and escrow officers.

The commissioner holds a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or certain members of the public request to be considered or that the commissioner determines necessary to consider.

DIGEST: CSHB 1457 would amend provisions for obtaining a license or license renewal for a title insurance agent or escrow officer, the prohibited grounds for rejection, delay, or denial of applications or renewals for title insurance agents or escrow officers, and the process for public hearings to consider changing a premium rate.

License application and renewal. The bill would make changes to the license renewal process for a title insurance agent and the license application and renewal process for an escrow officer.

It would amend the Insurance Code to provide that not later than 20 business days after the Department of Insurance received a renewal application from a title agent, or a license application or renewal for an escrow officer, the department would notify the applicant in writing of any deficiencies in the application that would render it incomplete.

Not later than the fifth business day after the date the application was complete, the department would notify the applicant in writing of the date that the application or renewal was complete.

A renewal application automatically would be approved on the 30th business day after the date the renewal application was complete unless the department notified the applicant in writing on or before that date of the factual grounds on which the department proposed to deny the license.

Title agent appointment. The bill would make changes to the multiple appointment process for a title agent.

TDI would have to notify the title insurance agent and appointing title insurance company not more than the 20 business days after the department received a notice from a company alerting them of the additional appointment of a licensed title insurance agent of any deficiencies in the notice that rendered the notice incomplete. Otherwise the notice would be considered complete on the date the department received it. Within five business days after the notice was complete, the department would notify the title insurance agent and appointing title insurance company in writing of the date that it was complete.

Under the bill, TDI could not reject or delay notices of appointment based wholly or partly on a pending department audit, complaint investigation, or a pending disciplinary action against certain applicants or license holders that had not been closed or finally adjudicated on or before the date the notice was received by the department or certain applications were filed.

Notice of disciplinary or enforcement action. CSHB 2408 would require that department notify a title insurance license holder of a disciplinary or enforcement action in writing not later than 30 business days, and an escrow license holder not later than 20 business days, after the department assigned a file number to the action. A notice would provide a license holder fair notice of the alleged facts known by the department on the date of the notice that constituted grounds for the action.

A disciplinary or enforcement action would be automatically dismissed with prejudice unless the department served a notice of hearing on the license holder not later than the 60th business day after the date the department received a hearing request from the license holder.

Hearing on premium rate change. Under the bill, the commissioner would order a public hearing to consider changing a premium rate, including fixing a new premium rate, in response to a written request by:

- a title insurance company;
- an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by the department;
- an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by the department; or
- the office of public insurance counsel.

The bill would require the commissioner to hold a public hearing at least once every five years.

Under the bill, certain public hearings would be conducted by the commissioner as a contested case hearing at the request of:

- a title insurance company;
- an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by the department;
- an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by the department; or
- the office of public insurance counsel.

If a hearing for a premium rate change was not conducted as a contested case hearing, the commissioner would have to render a decision and issue a final order not later than 120 days after the date the commissioner received a written request.

If a hearing held was conducted as a contested case hearing, the commissioner:

- would have to issue a notice of call for items to be considered at the hearing not later than 30 days after the date the commissioner received a request for a public hearing;
- could not require responses to the notice of call before 60 days after the date the commissioner issued the notice of call;
- would have to issue a notice of public hearing requested not later than 30 days after the date responses to the notice of call were required;
- would have to commence the public hearing not earlier than 120 days after the date the commissioner issued a notice of hearing;
- would have to close the public hearing not later than 150 days after the date the commissioner issued the notice of public hearing; and
- would have to render a decision and issue a final order not later than 60 days after the record made in the public hearing was closed.

A party's presentation of relevant, admissible oral testimony in a public hearing could not be limited, and the commissioner would consider each matter presented in a hearing and announce in a public hearing all decisions on all matters considered. A party could petition a district court in Travis County to enter an order requiring the commissioner to comply with the deadlines described if the commissioner failed to meet a requirement.

If the commissioner failed to comply with the requirements, a combination of at least three associations, persons, or entities could jointly petition a district court of Travis County to adopt a rate based on the record made in the hearing.

If the record made in the hearing before the commissioner was not complete before the request for the court to adopt a premium rate, the

court would hold an evidentiary hearing to establish a record before adopting the premium rate.

After a petition was filed, the commissioner could not issue findings or an order related to the subject matter of the petition until after the date the court entered a final judgment. A district court could appoint a magistrate to adopt a rate.

Other provisions. Under the bill, notice of certain hearings would be sent to certain parties and published in the Texas Register and on the department's website.

The bill would require the contents of the annual statistical report, including any amendments, be established in a rulemaking hearing. An amendment to the report could not apply retroactively.

Under CSHB 2408, a title insurance company or agent would not be prohibited from providing continuing education, whether or not for accreditation, at market rates.

Effective date. The bill would take effect immediately if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

NOTES:

The companion bill, SB 1457 by Harris, was considered in a public hearing by the Senate Business and Commerce Committee on April 12 and left pending.