

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2408  
By: Darby, Pena (Harris)  
Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties contend that the ratemaking process for title rates within the Texas Department of Insurance (TDI) could be streamlined to increase efficiencies while ensuring adequate due process protections for the regulated entities. The parties assert that legislation is needed to improve certain provisions and schedule requirements for public hearing by removing the requirement for a biennial rate hearing to allow additional interested parties to request a hearing when they consider it necessary, expanding provisions granting the standing of certain parties at a hearing, requiring a hearing if no hearing is called within a specified period from the previous hearing, and streamlining the public notice requirements for TDI.]

This bill provides that a title insurance company is not required to offer or provide in connection with a title insurance policy an endorsement insuring a loss from damage resulting from the use of the surface of the land for the extraction or development of coal, lignite, oil, gas, or another mineral if the policy includes a general exception or exclusion from coverage a loss from damage resulting from the use of the surface of the land for the extraction or development of coal, lignite, oil, gas, or another mineral. The bill also gives TDI the clear ability to participate in educational opportunities offered by title industry members.

C.S.H.B. 2408 seeks to address matters relating to administrative procedures for title insurance hearings, licensing, and enforcement as well as amending current law relating to title insurance coverage for minerals and surface damage resulting from mineral extraction and development.

C.S.H.B. 2408 amends current law relating to title insurance.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 2501.009, Insurance Code) of this bill.

Rulemaking authority of the commissioner of insurance is expressly restricted in SECTION 9 (Section 2703.055, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 2501, Insurance Code, by adding Section 2501.009, as follows:

Sec. 2501.009. GIFTS, GRANTS, AND DONATIONS FOR EDUCATIONAL PURPOSES. (a) Authorizes the Texas Department of Insurance (TDI) to accept gifts, grants, and donations to enable employees of TDI to participate in educational events, and for other educational purposes, related to title insurance.

(b) Authorizes the commissioner of insurance (commissioner) to adopt rules related to the acceptance of gifts, grants, and donations described in Subsection (a).

SECTION 2. Amends Section 2502.055(a), Insurance Code, as follows:

(a) Provides that the activities described in this section are not rebates. Provides that nothing in this subchapter prohibits a title insurance company or a title insurance agent from:

(1) engaging in promotional and educational activities that are not conditioned on the referral of title insurance business, rather than engaging in legal promotional and educational activities that are not conditioned on the referral of title insurance business and not prohibited by Subchapter B (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined), Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices);

(2)-(4) Makes no changes to these subdivisions; or

(5) providing continuing education courses at market rates, regardless of whether participants receive credit hours.

Makes a nonsubstantive change.

SECTION 3. Amends Section 2651.007, Insurance Code, by adding Subsections (d), (e), (f), and (g), as follows:

(d) Requires TDI, not later than the 20th business day after the date TDI receives a renewal application, to notify the applicant in writing of any deficiencies in the application that render the renewal application incomplete.

(e) Requires TDI, not later than the fifth business day after the date the renewal application is complete, to notify the applicant in writing of the date that the renewal application is complete.

(f) Provides that a renewal application is automatically approved on the 30th business day after the date the renewal application is complete, unless on or before that date TDI notifies the applicant in writing of the factual grounds on which TDI proposes to deny the license under Section 2651.301.

(g) Authorizes TDI to provide a notice required under this section by e-mail.

SECTION 4. Amends Section 2651.009, Insurance Code, by amending Subsection (c) and adding Subsections (c-1), (c-2), (c-3), as follows:

(c) Requires TDI, not later than the 20th business day after the date it receives a notice under Subsection (b), to notify the title insurance agent and appointing title insurance company in writing of any deficiencies in the notice that render the notice incomplete. Provides that a notice under Subsection (b) is considered complete on the date TDI receives the notice, unless TDI provides notice of the deficiencies under this section.

(c-1) Requires TDI, not later than the fifth business day after the date the notice under Subsection (b) is complete, to notify the title insurance agent and appointing title insurance company in writing of the date that the notice under Subsection (b) is complete.

(c-2) Creates this subsection from existing text. Provides that the appointment is effective on the eighth business day following the date the notice of appointment is complete and TDI receives the fee, unless TDI proposes to reject the appointment. Requires TDI, if TDI proposes to reject the appointment, to notify the title insurance agent and the appointing title insurance company in writing of the factual grounds on which TDI proposes to reject the appointment not later than the seventh business day after the date on which the notice of appointment is complete. Makes nonsubstantive changes.

(c-3) Authorizes TDI to provide a notice required under this section by e-mail.

SECTION 5. Amends Subchapter G, Chapter 2651, Insurance Code, by adding Sections 2651.3015 and 2651.303, as follows:

Sec. 2651.3015. PROHIBITED GROUNDS FOR REJECTION, DELAY, OR DENIAL.

(a) Prohibits TDI, except as provided by Subsection (b) or (c), from rejecting, delaying, or denying a notice of appointment under Section 2651.009 based wholly or partly on a pending TDI audit or complaint investigation or a pending disciplinary action against a title insurance agent or appointing title insurance company that has not been finally closed or resolved by a final order issued by the commissioner on or before the date on which the notice is received by TDI.

(b) Authorizes TDI to reject a notice of appointment under Section 2651.009 if TDI determines that the appointing title insurance company or the title insurance agent intentionally made a material misstatement in the notice of appointment or attempted to have the appointment approved by fraud or misrepresentation.

(c) Authorizes TDI to delay approval of a notice of appointment if:

(1) the title insurance agent or the appointing title insurance company is the subject of a criminal investigation or prosecution; or

(2) the deputy commissioner of the title division of TDI makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by the title insurance agent or appointing title insurance company.

(d) Prohibits TDI, except as provided by Subsection (e) or (f), from delaying or denying a renewal application under Section 2651.007 based wholly or partly on a TDI audit or complaint investigation of, or disciplinary or enforcement action against, an applicant or license holder that is pending and has not been finally closed or resolved by a final order issued by the commissioner on or before the date on which the application is complete.

(e) Authorizes TDI to deny a renewal application under Section 2651.007 if TDI determines that the applicant or license holder intentionally made a material misstatement in the renewal application or attempted to obtain the license renewal by fraud or misrepresentation.

(f) Authorizes TDI to delay a renewal application if:

(1) the applicant or license holder is the subject of a criminal investigation or prosecution; or

(2) the deputy commissioner of the title division of TDI makes a good faith determination that there is a credible suspicion that there are ongoing acts of fraud by the applicant or license holder.

Sec. 2651.303. NOTICE OF DISCIPLINARY OR ENFORCEMENT ACTION; AUTOMATIC DISMISSAL. (a) Requires TDI to notify a license holder in writing of a disciplinary or enforcement action against the license holder not later than the 30th business day after the date TDI assigns a file number to the action, except that this subsection does not apply to a file or action:

(1) that is the subject of a pending criminal investigation or prosecution; or

(2) about which the deputy commissioner of the title division of TDI makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by a person who is the subject of the action.

(b) Authorizes a notice required by Subsection (a) to be provided by e-mail and requires that the notice provide a license holder fair notice of the alleged facts known by TDI on the date of the notice that constitute grounds for the action.

(c) Provides that a disciplinary or enforcement action is automatically dismissed with prejudice, unless TDI serves a notice of hearing on the license holder not later than the 60th business day after the date TDI receives a hearing request from the license holder.

(d) Authorizes TDI to provide information about an enforcement action, including a copy of a notice issued under this section, to each title insurance company with which a title insurance has, or proposes to obtain, an appointment.

SECTION 6. Amends Subchapter B, Chapter 2652, Insurance Code, by adding Section 2652.059, as follows:

Sec. 2652.059. DENIAL OF LICENSE APPLICATION OR LICENSE RENEWAL; APPROVAL. (a) Requires TDI, not later than the 20th business day after the date TDI receives a license application or a license renewal under this chapter, to notify the applicant or license holder in writing of any deficiencies in the application that render the application incomplete.

(b) Requires TDI, not later than the fifth business day after the date the application is complete, to notify the applicant or license holder in writing of the date that the license application or license renewal is complete.

(c) Provides that an application is automatically approved on the 30th business day after the date the application is complete, unless on or before that date TDI notifies the applicant or license holder in writing of the factual grounds on which TDI proposes to deny the application.

(d) Authorizes TDI to provide a notice required under this section by e-mail.

SECTION 7. Amends Subchapter E, Chapter 2652, Insurance Code, by adding Sections 2652.2015 and 2652.203, as follows:

Sec. 2652.2015. PROHIBITED GROUNDS FOR DELAY OR DENIAL. (a) Prohibits TDI, except as provided by Subsection (b) or (c), from delaying or denying a license application or a license renewal based wholly or partly on a TDI audit or complaint investigation of, or disciplinary or enforcement action against, a license holder or applicant that is pending and has not been finally closed or resolved by a final order issued by the commissioner on or before the date on which the initial or renewal application is complete.

(b) Authorizes TDI to delay a license application or license renewal if:

(1) the applicant or license holder is the subject of a criminal investigation or prosecution; or

(2) the deputy commissioner of the title division of TDI makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by the applicant or license holder.

(c) Authorizes TDI to deny a license application or license renewal if TDI determines that the applicant or license holder intentionally made a material misstatement in the license application or license renewal or the applicant or license holder attempted to obtain the license or renewal by fraud or misrepresentation.

Sec. 2652.203. NOTICE OF DISCIPLINARY OR ENFORCEMENT ACTION; AUTOMATIC DISMISSAL. (a) Requires TDI to notify a license holder of a disciplinary action or enforcement action against the license holder not later than the 30th business day after the date TDI assigns a file number to the action, except that this subsection does not apply to a file or action:

(1) that is the subject of a pending criminal investigation or prosecution; or

(2) about which the deputy commissioner of the title division of TDI makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by a person who is the subject of the action.

(b) Requires that a notice required by Subsection (a) provide a license holder fair notice of the alleged facts known by TDI on the date of the notice that constitute grounds for the action.

(c) Provides that a disciplinary or enforcement action is automatically dismissed with prejudice, unless TDI serves a notice of hearing on the license holder not later than the 60th business day after the date TDI receives a hearing request from the license holder.

(d) Authorizes TDI to provide information about an enforcement action, including a copy of a notice issued under this section, to each title insurance agent or direct operation with which an escrow officer has, or proposes to obtain, employment.

SECTION 8. Amends Subchapter B, 2703, Insurance Code, by adding Section 2703.0515, as follows:

Sec. 2703.0515. CERTAIN REQUIREMENTS PROHIBITED. (a) Provides that a title insurance company is not required to offer or provide in connection with a title insurance policy an endorsement insuring a loss from damage resulting from the use of the surface of the land for the extraction or development of coal, lignite, oil, gas, or another mineral if the policy includes a general exception or exclusion from coverage a loss from damage resulting from the use of the surface of the land for the extraction or development of coal, lignite, oil, gas, or another mineral.

(b) Defines, in this section, "general exception or exclusion."

(c) Prohibits an additional premium or other amount from being charged for an endorsement to a loan policy of title insurance if the endorsement:

(1) insures against loss from damage to improvements or permanent buildings located on land that results from the future exercise of any right existing on the date of the loan policy to use the surface of the land for the extraction or development of coal, lignite, oil, gas, or another mineral;

(2) expressly does not insure against loss resulting from subsidence; and

(3) was promulgated by the commissioner in calendar 2009.

SECTION 9. Amends Subchapter B, Chapter 2703, Insurance Code, by adding Section 2703.055 and 2703.056, as follows:

Sec. 2703.055. REQUIREMENT OF CERTAIN PROVISIONS PROHIBITED. Prohibits the commissioner from requiring by rule, or through adoption of a title insurance policy or other insuring form, that a title insurance policy delivered or issued for delivery in this state:

(1) insure against a loss that a person with an interest in real property sustains from the property by reason of severance of minerals from the surface estate; or

(2) provide insurance as to ownership of minerals.

Sec. 2703.056. EXCEPTIONS; MINERAL INTERESTS. (a) Authorizes a title insurance company, subject to the underwriting standards of the title insurance company, to, in a commitment for title insurance or a title insurance policy include a general exception or a special exception, except from coverage a mineral estate or an instrument that purports to reserve or transfer all or part of a mineral estate.

(b) Prohibits a reduction to, or credit on a premium charge for, a policy of title insurance or other insuring form from being directly or indirectly based on an exclusion of, or general or special exception to, a mineral estate in the title insurance policy.

(c) Provides that the inclusion in a title insurance policy of a general exception or a special exception described by Subsection (a) does not create title insurance coverage as to the condition or ownership of the mineral estate.

SECTION 10. Amends Section 2703.153, Insurance Code, by amending Subsection (d) and adding Subsections (h) and (i), as follows:

(d) Authorizes a title insurance company or a title insurance agent aggrieved by a TDI requirement concerning the submission of information to bring a suit in a district court in Travis County alleging that the request for information:

(1) is unduly burdensome; or

(2) is not a request for information material to fixing and promulgating premium rates or another matter that may be the subject of the periodic hearing, rather than biennial hearing, and is not a request reasonably designed to lead to the discovery of that information.

(h) Requires that the contents of the statistical report, including any amendments to the statistical report, be established in a rulemaking hearing under Subchapter B (Rulemaking), Chapter 2001 (Administrative Procedure), Government Code.

(i) Prohibits an amendment to the contents of the statistical report from applying retroactively.

SECTION 11. Amends Section 2703.202, Insurance Code, by amending Subsections (b) and (d) and adding Subsections (g), (h), (i), (j), (k), (l), (m), (n), and (o), as follows:

(b) Requires the commissioner to order a public hearing to consider changing a premium rate, including fixing a new premium rate, in response to a written request, rather than at the request, of:

(1) a title insurance company;

(2) an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by TDI;

(3) an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by TDI; or

(4) the office of public insurance counsel.

Deletes existing text requiring the commissioner, at the request of a title insurance company or the office of public insurance counsel, to order a public hearing to consider changing a premium rate.

(d) Requires that, notwithstanding Subsection (c), a public hearing held under Subsection (a) or under Section 2703.206 to be conducted by the commissioner as a contested case hearing under Subchapters C (Contested Cases: General Rights and Procedures), D (Contested Cases: Evidence, Witness, and Discovery), E (Contested Cases: Testimony of Child), F (Contested Cases: Final Decisions and Orders; Motions for Rehearing), G (Contested Cases: Judicial Review), H (Court Enforcement), and Z (Miscellaneous), Chapter 2001, Government Code, at the request of:

(1) a title insurance company;

(2) an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by TDI;

(3) an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by TDI; or

(4) the office of public insurance counsel.

(g) Requires the commissioner, if a hearing held under Subsection (a) is not conducted as a contested case hearing, to render a decision and issue a final order not later than the 120th day after the date the commissioner receives a written request under Subsection (b).

(h) Provides that if a hearing held under Subsection (a) is conducted as a contested case hearing:

(1) not later than the 30th day after the date the commissioner receives a request for a public hearing under Subsection (b), the commissioner shall issue a notice of call for items to be considered at the hearing;

(2) the commissioner may not require responses to the notice of call before the 60th day after the date the commissioner issues the notice of call;

(3) the commissioner shall issue a notice of public hearing requested under Subsection (d) not later than the 30th day after the date responses to the notice of call are required under Subdivision (2);

(4) the commissioner shall commence the public hearing not earlier than the 120th day after the date the commissioner issues a notice of hearing under Subdivision (3);

(5) the commissioner shall close the public hearing not later than the 150th day after the date the commissioner issues the notice of hearing under Subdivision (3); and

(6) the commissioner shall render a decision and issue a final order not later than the 60th day after the record made in the public hearing is closed under Subdivision (5).

(i) Prohibits a party's presentation of relevant, admissible oral testimony in a hearing under this section from being limited.

(j) Requires the commissioner to consider each matter presented in a hearing under this section and announce in a public hearing all decisions on all matters considered.

(k) Authorizes a party described by Subsection (b) to petition a district court in Travis County to enter an order requiring the commissioner to comply with the deadlines described by this section if the commissioner fails to meet a requirement in Subsection (g) or (h).

(l) Authorizes a combination of at least three associations, persons, or entities listed in Subsection (b), subject to Subsection (m), if the commissioner fails to comply with the requirements under Subsection (g) or (h)(6), to jointly petition a district court of Travis County to adopt a rate based on the record made in the hearing before the commissioner under this section.

(m) Requires the court, if the record made in the hearing before the commissioner is not complete before the request for the court to adopt a premium rate under Subsection (l), to hold an evidentiary hearing to establish a record before adopting the premium rate.

(n) Prohibits the commissioner, after a petition has been filed under Subsection (l), from issuing findings or an order related to the subject matter of the petition until after the date the court enters a final judgment.

(o) Authorizes a district court to appoint a magistrate to adopt a rate under this section.

SECTION 12. Amends Section 2703.203, Insurance Code, as follows:

Sec. 2703.203. New heading: PERIODIC HEARING. Requires the commissioner to hold a public hearing not earlier than July 1 after the fifth anniversary of the closing of a hearing held under this chapter, rather than a biennial public hearing not earlier than July 1 of each even-numbered year, 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 member of the public admitted as a party under Section 2703.204 requests to be considered or that the commissioner determines necessary to consider. Makes conforming changes.

SECTION 13. Amends Section 2703.204, Insurance Code, as follows:

Sec. 2703.204. New heading: ADMISSION AS PARTY TO PERIODIC HEARING. (a) Requires a trade association whose membership is composed of at least 20 percent of the members of an industry or group represented by a trade association, an association, a person or entity described by Section 2703.202(b), or TDI staff, subject to this section, to be admitted as a party to the periodic hearing under Section 2703.203. Deletes existing text requiring an individual or association or other entity recommending adoption of a premium rate or another matter relating to regulating the business of title insurance to be admitted as a party to the biennial hearing.

(b) Authorizes a party to any portion of the periodic hearing relating to ratemaking, rather than authorizes a party to the ratemaking phase of the biennial hearing, to request that the commissioner remove any other party to that portion of the hearing on the grounds that the other party does not have a substantial interest in title insurance. Makes a conforming change.

SECTION 14. Amends Section 2703.207, Insurance Code, as follows:

Sec. 2703.207. NOTICE OF CERTAIN HEARINGS. Requires that notice of the hearing and of each item be considered at the hearing, not later than the 60th day before the date of a hearing under Section 2703.202, 2703.203, or 2703.206, be:

(1) sent directly to all parties to the previous hearing conducted under Section 2703.202, 2703.203, or 2703.206, if the hearing was conducted as a contested case hearing, rather than sent directly to all title insurance companies and title insurance agents; and



(2) published in the Texas Register and on TDI's Internet website, rather than provided to the public in a manner that gives fair notice concerning the hearing.

SECTION 15. Repealer: Section 2703.205 (Phases of Biennial Hearing), Insurance Code.

SECTION 16. Makes application of Section 2703.0515, Insurance Code, as added by this Act, prospective to January 1, 2012.

SECTION 17. Makes application of Sections 2703.055 and 2703.056, Insurance Code, as added by this Act, prospective to January 1, 2012.

SECTION 18. Effective date: September 1, 2011.