

INSURANCE CODE

TITLE 11. TITLE INSURANCE

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 2502. PROHIBITED CONDUCT

SUBCHAPTER A. PROHIBITED CONDUCT IN GENERAL

Sec. 2502.001. ENGAGING IN CERTAIN INSURANCE BUSINESS PROHIBITED. (a) A domestic or foreign corporation operating under this title may not engage in the business of any kind of insurance other than title insurance.

(b) A company may not engage in the business of title insurance if the company engages in the business of another kind of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.002. COVERAGE FOR UNMARKETABILITY OF TITLE PROHIBITED. (a) An insurance company may not insure against loss or damage by reason of unmarketability of title.

(b) The commissioner may not adopt a rule or form providing for coverage prohibited by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.003. INSURING AROUND DEFINED; PROHIBITIONS AND EXCEPTIONS. (a) Except as provided by Subsection (c), a title insurance company may not wilfully issue a binder for title insurance or a title insurance policy showing no outstanding enforceable recorded liens on real property against which the company knows an outstanding enforceable recorded lien exists.

(b) A title insurance company knows that an outstanding enforceable recorded lien exists against real property if, based on an examination of the title under which the binder for title insurance or title insurance policy is issued, the company determines that the lien is valid and enforceable.

(c) The commissioner by rule may approve circumstances under which a title insurance company may issue a binder for title insurance or a title insurance policy otherwise prohibited by

Subsection (a).

(d) Except as otherwise provided by this section, a title insurance company may determine the insurability of title to real property and any other matter that the company considers to be insurable under a binder for title insurance or a title insurance policy issued in connection with the property.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.004. GUARANTEE OF MORTGAGE PAYMENT PROHIBITED.

(a) A title insurance company may not guarantee the payment of a mortgage on real property.

(b) A title insurance company that violates this section forfeits its authority to engage in business in this state and shall immediately surrender its certificate of authority.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.005. CIVIL PENALTY. (a) A person is liable to the state for a civil penalty of not more than \$5,000 if the person:

(1) wilfully violates Section 2502.003 or 2502.004;

or

(2) violates an order of the commissioner refusing to approve an application to issue a binder for title insurance or a title insurance policy prohibited by Section 2502.003(a).

(b) The department may bring an action in a Travis County district court to recover the penalty provided by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.006. CERTAIN EXTRA HAZARDOUS COVERAGES PROHIBITED. (a) A title insurance company may not insure against loss or damage sustained by reason of any claim that under federal bankruptcy, state insolvency, or similar creditor's rights laws the transaction vesting title in the insured as shown in the policy or creating the lien of the insured mortgage is:

(1) a preference or preferential transfer under 11 U.S.C. Section 547;

(2) a fraudulent transfer under 11 U.S.C. Section 548;

(3) a transfer that is fraudulent as to present and

future creditors under Section 24.005, Business & Commerce Code, or a similar law of another state; or

(4) a transfer that is fraudulent as to present creditors under Section 24.006, Business & Commerce Code, or a similar law of another state.

(b) The commissioner may by rule designate coverages that violate this section. It is not a defense against a claim that a title insurance company has violated this section that the commissioner has not adopted a rule under this subsection.

(c) Title insurance issued in or on a form prescribed by the commissioner shall be considered to comply with this section.

(d) Nothing in this section prohibits title insurance with respect to liens, encumbrances, or other defects to title to land that:

(1) appear in the public records before the date on which the contract of title insurance is made;

(2) occur or result from transactions before the transaction vesting title in the insured or creating the lien of the insured mortgage; or

(3) result from failure to timely perfect or record any instrument before the date on which the contract of title insurance is made.

(e) A title insurance company may not engage in the business of title insurance in this state if the title insurance company provides insurance of the type prohibited by Subsection (a) anywhere in the United States, except to the extent that the laws of another state require the title insurance company to provide that type of insurance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1059 (S.B. 322), Sec. 1, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1063 (S.B. 735), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. REBATES AND DISCOUNTS

Sec. 2502.051. REBATES AND DISCOUNTS PROHIBITED. A commission, rebate, discount, portion of a title insurance premium,

or other thing of value may not be directly or indirectly paid, allowed, or permitted by a person engaged in the business of title insurance or received or accepted by a person for engaging in the business of title insurance or for soliciting or referring title insurance business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.052. CERTAIN DIVISIONS OF REAL PROPERTY CHARGES PROHIBITED. Other than for services actually performed, a person may not give or accept any portion, split, or percentage of a charge made or received for a settlement or closing performed in connection with a transaction involving the conveyance or mortgaging of real property located in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.053. CERTAIN COMPENSATORY PAYMENTS NOT PROHIBITED. This subchapter does not prohibit:

(1) payment for services actually performed by a title insurance company, title insurance agent, or direct operation in connection with title examination or with closing the transaction or furnishing title evidence if:

(A) the payment does not exceed the percentage of premium or other amount established by the commissioner for the payment; and

(B) the person receiving the payment is licensed as provided by this title;

(2) payment of bona fide compensation to a bona fide employee principally employed by a title insurance company, title insurance agent, or direct operation;

(3) reasonable payment for goods or facilities actually provided and received; or

(4) payment for services actually performed by an attorney in connection with title examination or with closing the transaction, if the payment does not exceed a reasonable charge for the services.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.054. CERTAIN DIVISIONS OF PREMIUMS NOT PROHIBITED. (a) For purposes of this section, a subsidiary is a company at least 50 percent of the voting stock of which is owned by the title insurance company or by a wholly owned subsidiary of the title insurance company.

(b) This subchapter does not:

(1) prohibit a title insurance company from:

(A) appointing as its title insurance agent for a county a person who owns or leases and operates an abstract plant for that county; and

(B) arranging for a division of premiums with the agent as set by the commissioner; or

(2) affect the division of a premium between a title insurance company and its subsidiary title insurance agent when the company directly issues a title insurance policy or contract under Section 2704.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.055. PROMOTIONAL AND EDUCATIONAL ACTIVITIES NOT REBATES. (a) The activities described in this section are not rebates. 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 and not prohibited by Subchapter B, Chapter 541;

(2) purchasing advertising promoting the title insurance company or the title insurance agent at market rates from any person in any publication, event, or media;

(3) delivering to a party in the transaction or the party's representative legal documents or funds which are directly or indirectly related to a transaction closed by the title insurance company or title insurance agent;

(4) participating in an association of attorneys, builders, developers, realtors, or other real estate practitioners provided that the level of such participation does not exceed normal participation of a volunteer member of the association and is not activity that would ordinarily be performed by paid staff of

an association; or

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

(b) "Market rate" means the price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the rights or items purchased or sold to similar rights or items that have been recently purchased by others or sold to others, including others not in the title insurance business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2005, 79th Leg., Ch. 631 (H.B. 2565), Sec. 7, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 2, eff. September 1, 2011.

Sec. 2502.056. MONETARY FORFEITURE. (a) A person who pays or receives a commission, rebate, discount, or other thing of value for soliciting or referring title insurance business in violation of Section 2502.051 is engaging in the unauthorized business of insurance.

(b) After notice and opportunity for hearing, a person who makes or receives a payment described by Subsection (a) is liable for a monetary forfeiture in an amount not less than the value of or more than three times the value of the payment.

(c) A monetary forfeiture under Subsection (b) is in addition to any other penalty provided by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.057. CERTAIN COMPENSATORY PAYMENTS RELATED TO CERTAIN ELECTRIC ENERGY PROJECTS PERMITTED. (a) This section applies with respect to a utility project that is:

(1) designed to produce, generate, transmit, distribute, sell, or furnish electric energy; and

(2) valued on completion at more than \$25 million.

(b) A payment for furnishing title evidence for the issuance

of a title insurance policy related to a project described by Subsection (a) may be:

(1) a flat fee or fee calculated on an hourly basis that:

(A) is payable on the date the title evidence is furnished; and

(B) does not exceed \$25,000; or

(2) a portion of the title insurance premium:

(A) based on the percentage established by the commissioner for payment by a title insurance company, title insurance agent, or direct operation for services performed by another title insurance company, title insurance agent, or direct operation; and

(B) payable on the date of the issuance of the policy for which the evidence is furnished.

(c) The payment must be:

(1) made by the proposed insured to the title insurance company, title insurance agent, or direct operation that furnishes the title evidence; and

(2) credited against the title insurance premium charged for the issuance of the title insurance policy for which the evidence is furnished.

(d) Nothing in this section may be construed to allow the payment of an amount in violation of the premium rates promulgated or the division of premium established by the commissioner.

(e) This section does not apply to a payment to a reinsurer for the assumption of reinsurance described by Subchapter G, Chapter [2551](#).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1056 (H.B. [3106](#)), Sec. 1, eff. September 1, 2013.