

ACT 268

**A Bill for an Act Amending Chapter 181, Revised Laws of Hawaii
1955, as Amended, Relating to the Hawaii Insurance Law.**

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 181 of the Revised Laws of Hawaii 1955 is hereby amended by adding a sub-title immediately below the words "The Hawaii Insurance Law" appearing in the title, to read as follows:

"PART I. GENERAL INSURANCE LAWS."

SECTION 2. Section 181-4(b) of the Revised Laws of Hawaii 1955 is hereby amended by revising the first sentence thereof to read as follows:

"The following contracts are not to be considered insurance for the purposes of Part I of this chapter:"

SECTION 3. Chapter 181, Revised Laws of Hawaii 1955, is hereby amended by adding thereto a new Part II to read as follows:

"PART II. TITLE INSURANCE AND TITLE INSURERS"

"Sec. 181-730. Scope of sections 181-730 to 181-760. The provisions of sections 181-730 to 181-760 relate only to title insurers and title insurance policies. None of the provisions of sections 181-730 to 181-760 shall be deemed to apply to persons engaged in the business of preparing and issuing searches, certificates, chains or abstracts of title, lien searches or any continuations of any of the above, to property and certifying to the correctness thereof provided such persons do not insure such titles, and provided such persons are not underwritten title companies as defined in section 181-749.

"Sec. 181-731. Definitions. Any written instrument purporting to show the title to real or personal property or any interest therein or encumbrance thereon, or to furnish such information relative to real property, which in express terms purports to insure such title or the correctness of such information, is a title policy. Any insurer who issues a title policy is a title insurer.

"Sec. 181-732. Guarantee fund; limit of risk.

"(a) Every title insurer, before issuing any policy, shall deposit \$100,000 with the insurance commissioner or other designated official of its domicile or with the insurance commissioner of this State as a 'Guarantee Fund' for the security and protection of the holders of, or beneficiaries under, its title policies.

"(b) No insurer transacting title insurance in this State shall expose itself to any one risk in an amount exceeding fifty percent of the aggregate amount of its total capital and surplus and its reserves other than its loss or claim reserves. As used in this section, the words 'any one risk' shall mean the risk or hazard attaching to or arising in connection with any one piece or parcel of property, whether or not the policy insures other property. Any risk or portion of any risk which shall have been reinsured as authorized in this chapter shall be deducted in determining the limitation of risk prescribed in this section.

"Sec. 181-733. Assets in guarantee fund. Any such deposit may be made either in lawful money of the United States or in any of the securities authorized for investment by domestic incorporated insurers.

“Sec. 181-734. Approval of deposit. If the deposit is made in this State, it shall first be approved by the commissioner, who shall forthwith make a special deposit thereof with the director of finance of this State for the purpose specified in section 181-732.

“Sec. 181-735. Substitution of assets. Except as provided in section 181-737, assets in such deposits in this State may, with the approval of the commissioner, be withdrawn or exchanged from time to time for other assets of like character and value.

“Sec. 181-736. Interest and dividends. As long as the depositing insurer continues solvent, it shall receive the interest and dividends on any assets in the deposit.

“Sec. 181-737. Final disposition of assets in deposit. Except on withdrawal of the insurer from this State, or substitution pursuant to section 181-735, assets in the deposit in this State shall be subject to final sale, transfer, and disposal of the proceeds thereof by the commissioner only on the order of a court of competent jurisdiction and for the security and protection of the holders of, or beneficiaries under, the depositing insurer’s title insurance policies.

“Sec. 181-738. Capital requirement. A title insurer shall not transact any insurance in this State unless it has a paid-in capital represented by shares of stock of at least \$250,000.

“Sec. 181-739. Restrictions on business. An insurer which anywhere in the United States transacts any class of insurance other than title insurance is not eligible for the issuance of a certificate of authority to transact title insurance in this State nor for the renewal thereof.

“Sec. 181-740. Surplus funds. Every title insurer shall annually set apart a sum equal to ten percent of its premiums collected during the year. Such sums shall be allowed to accumulate until a fund is created equal in amount to twenty-five percent of the aggregate of the subscribed capital stock of the insurer. Such funds shall be known as the ‘Title Insurance Surplus Fund.’ Where, pursuant to the laws of its domicile, a title insurer is required to and does establish and maintain a special fund or reserve equal to or in excess of the title insurance surplus fund herein provided for, its compliance with such laws shall constitute compliance with the provisions of this section.

“Sec. 181-741. Purpose of fund. The title insurance surplus fund shall be maintained as a further security to holders and beneficiaries of the title policies issued by the insurer. If at any time the fund is impaired by reason of a loss, the amount by which it is impaired shall be restored in the manner provided for its accumulation. The reporting of a loss is an impairment of such fund for the purposes of this section.

“Sec. 181-742. Purchase of materials and plant; valuation. Any domestic title insurer, after having its required capital paid in and depositing its required guarantee fund with the commissioner, may invest its funds in the preparation and purchase of materials and plant necessary to enable it to engage in the title insurance business.

In all statements and proceedings required by law for the ascertainment and determination of the condition of such insurer, such materials and plant shall be treated in one of the following ways:

“(a) They may be treated as an asset, valued at actual cost to the insurer not in excess of fifty percent of the aggregate par value of the shares of the insurer’s capital stock then issued, outstanding, and apportioned to its title insurance department, including treasury shares;

“(b) They may be treated as an asset, at such lesser value than that permitted by paragraph (a) of this section as the insurer estimates;

“(c) They may be omitted entirely from the statement or proceeding.

“Sec. 181-743. Dividends. A title insurer shall not pay any dividends except from profits remaining on hand after retaining unimpaired assets aggregating in value an amount equal to the sum of the following:

“(a) The aggregate par value of the shares of its capital stock issued and outstanding, including treasury shares;

“(b) The amount set apart as the title insurance surplus fund;

“(c) A sum sufficient to pay all liabilities for expenses and taxes, all losses reported or in course of settlement, and all other indebtedness, without impairment of the amount required to be set apart as the title insurance surplus fund

“Sec. 181-744. Loans to officers, etc. A title insurer shall not directly or indirectly make a loan from its assets to any of its officers, employees or directors, or to any member of the family of any officer or director. Any officer, director, agent, or employee of any such insurer who knowingly consents to any violation of this section is guilty of a misdemeanor.

“Sec. 181-745. Reinsurance upon withdrawing from title insurance business. Whenever any title insurer, upon withdrawing from or discontinuing its title insurance business in this State, desires to reinsure its policies with a title insurer whose title insurance surplus fund is not fully made up, the commissioner may require the reinsurer to increase its title insurance surplus fund. The amount of increase shall not be greater than the amount in the withdrawing insurer’s title insurance surplus fund nor greater than will fully make up the reinsurer’s title insurance surplus fund. Such increase may be made a condition of the commissioner’s approval of the reinsurance plan.

“Sec. 181-746. Insurance. Every domestic title insurer may issue title policies and may also insure:

“(a) The identity, due execution, and validity of any note or bond secured by mortgage.

“(b) The identity, due execution, validity and recording of any such mortgage.

“(c) The identity, due execution and validity of evidences of indebtedness issued by this State, or by any political subdivision or district therein, or by any private or public corporation.

“Sec. 181-747. Schedule of fees, etc. Every title insurer shall adopt, print and make available to the public a schedule of fees and charges for title policies. Such schedule shall show the entire charge to the public for each type of title policy regularly issued by the insurer, either by a statement of the particular charge for each type of policy in given amount of coverage, or by a statement of the charge per unit of the amount of coverage, or a combination of the two, and shall include the charge made by any underwritten title company for the search, certificate, chain or abstract of title, lien search, or any continuation of any of the above, upon the basis of which such title policy is issued. Such schedule may include a statement that additional charges are made when unusual conditions of title are encountered or when special or unusual risks are insured against and that additional charges are made for special services rendered in connection with the issuance of a title policy. Such schedule may provide different fees or charges for title policies covering property in different counties or separate schedules may be adopted for title policies covering property in different counties.

“Sec. 181-748. Schedules; type, date, etc. The schedules provided for in section 181-747 shall be printed in type not smaller than ten-point, shall be dated to show the dates they became effective, and so long as they are effective shall be kept at all times readily available to the public and prominently displayed in a public place in each of the offices of the title insurer, the controlled escrow company and the underwritten title company in the particular county to which they relate. On request, copies of such schedules shall be furnished to the public. All or any part of any schedule may be changed or amended at any time or from time to time. Each change or amendment shall be printed and dated to show the effective date of such change or amendment. No change or amendment shall become effective until at least five days after it has been displayed in the offices above mentioned in this section in the same manner as above provided for the display of schedules, and no change or amendment, increasing fees or charges shall apply to title policies ordered prior to the effective date of such change or amendment. Each title insurer, controlled escrow company and underwritten title company shall keep a complete file of its schedules and of all changes and amendments thereto until at least five years after they shall have ceased to be in effect, and such file shall be available for inspection by the commissioner at any appropriate time.

“Sec. 181-748.5. Contract forms, filing, disapproval.

“(a) Every title insurer shall at least thirty days before use, file with the commissioner every form of insurance contract which it proposes to issue as to risks located in this State, together with the forms of all printed endorsements or other modifications of such contracts proposed to be used.

“(b) The commissioner may disapprove any such form if it:

“(1) Is in violation of law; or

“(2) Contains inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract; or

"(3) Has any title, heading, or other indication of its provisions which is misleading; or

"(4) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

"(c) The commissioner shall not disapprove any such form after expiration of the initial thirty-day advance filing period except after a hearing thereon held in accordance with the provisions of Chapter 6C, Revised Laws of Hawaii 1955, as amended.

"(d) A title insurer shall not use in this State any form while it is so disapproved by the commissioner.

"Sec. 181-749. Controlled escrow company; underwritten title company. Each person engaged in the business of handling escrows of real property transactions in connection with which title policies are issued by a title insurer, which person, if an artificial person, directly or indirectly, is controlled by, or controls, or is under common control with, a title insurer, or controls or is controlled by or is under common control with an underwritten title company, or if a natural person, is employed by or controlled by a title insurer, or by an underwritten title company, is herein, for the purposes of sections 181-730 to 181-760, called a 'Controlled Escrow Company'. Each person engaged in the business of preparing lien or title searches, title examinations, certificates of searches of title or abstracts of title upon the basis of which a title insurer regularly writes title policies is herein called, for the purposes of sections 181-730 to 181-760, an 'Underwritten Title Company'.

"Sec. 181-750. Prohibited commissions. No title insurer, no controlled escrow company, and no underwritten title company shall pay to any person who is acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or of the prospective owner, lessee, or mortgagee of the real property or any interest therein, either directly or indirectly, any commission, or any part of its fees or charges or any other consideration as an inducement for or as compensation on any title insurance business or any escrow or other title business in connection with which a title policy is issued.

"Sec. 181-751. Rebates or reduced fees. No title insurer, no controlled escrow company, and no underwritten title company shall make any rebate of any portion of the fee or charge shown by the schedule required in section 181-747. No title insurer, no controlled escrow company and no underwritten title company shall quote any fee or make any charge for a title policy to any person which is less than that currently available to others for the same type of title policy in a like amount covering property in the same county and involving the same factors as set forth in its then currently effective schedule of fees and charges. The amount by which any fee or charge is less than that called for by the then currently effective schedule of fees and charges of the title insurer is an unlawful rebate; provided, that nothing contained in sections 181-730 to 181-760 shall prohibit bulk rates or special rates for customers of prescribed classes if such bulk or special rates are provided for in such schedule.

"Sec. 181-752. Prohibited issue of policy. No title insurer shall issue any title policy in any transaction in connection with which it or any person which is a controlled escrow company or underwritten title company by reason of its relationship with such title insurer has paid or contemplates paying any commission in violation of section 181-750 or in connection with which it or any such controlled escrow company or underwritten title company has made or contemplates making any unlawful rebate in violation of section 181-751.

"Sec. 181-753. Examination of records; power and duty. The commissioner, if he has reason to believe that any controlled escrow company or any underwritten title company has violated or is violating any of the provisions of this chapter, has the power and it is his duty to examine forthwith its books, records and accounts and in making any such examination he has all the power set forth in paragraph (c) of section 181-759, and any company so examined shall pay to the commissioner the cost of such examination on demand. Whenever the commissioner examines a title insurer, he shall make such examination of its books, records, and files as may be necessary in his judgment to determine whether or not it has violated or is violating any of the provisions of this chapter.

"Sec. 181-754. Annual statement. Every title insurer shall include in its annual statement furnished the commissioner pursuant to paragraph (d) of section 181-759, the name of each person in this State which is a controlled escrow company or underwritten title company by reason of its relationship with such title insurer.

"Sec. 181-755. Additional penalty. Every title insurer and every controlled escrow company and every underwritten title company which pays any commission or which makes any unlawful rebate in violation of this chapter shall be liable to this State for five times the amount of any such commission or unlawful rebate, the amount thereof to be recovered by the commissioner as a general realization of this State, in addition to any other penalty imposed by law.

"Sec. 181-756. Remedies. In enforcing any of the provisions of this chapter, the commissioner shall be entitled to the remedies provided for in paragraphs (b), (c), and (n) of section 181-759.

"Sec. 181-757. Revocation or suspension of certificate. The commissioner may after a hearing suspend or revoke the certificate of authority of any title insurer which, after ten days' written notice from the commissioner requiring it so to do, fails to print, display and make available to the public its schedule of fees and charges in the manner provided in sections 181-730 to 181-760. The commissioner may likewise after a hearing suspend or revoke the certificate of authority of any title insurer which, after ten days' written notice from the commissioner requiring it to cease and desist, continues to pay any commission or to make any rebate in wilful violation of the provisions of sections 181-730 to 181-760, or to issue any title policy in wilful violation of section 181-752. The hearings herein provided shall be conducted in accordance with the provisions of

paragraph (c) of section 181-759 and the commissioner shall have all the powers granted therein.

"Sec. 181-758. Division of fees. Nothing in sections 181-730 to 181-760 shall prohibit the division of fees or charges between two or more title insurers or between one or more title insurers and one or more underwritten title companies, if such division does not constitute an unlawful rebate; provided, that a title insurer shall specify on any title policy issued by it, either in a single amount or by itemization, the entire charge made to obtain such title policy, including the charges made by any underwritten title company for the title search, title examination, certificate or abstract of title upon the basis of which such title policy is issued. If so specified in a single amount, such charge shall be clearly described as the total charge for both the title insurance fee and the search, certificate, chain or abstract, of title, lien search, or any continuation of any of the above, as the case may be, of any underwritten title company.

"Sec. 181-759. General insurance law applicable. The following provisions of Part I of the Hawaii Insurance Law, Chapter 181, Revised Laws of Hawaii 1955, as amended, shall apply to title insurance and to title insurers:

- "(a) Sections 181-15 to 181-24; 181-26; 181-27;
- "(b) Sections 181-31 to 181-45;
- "(c) Sections 181-51 to 181-73;
- "(d) Sections 181-81 to 181-85; 181-91 to 181-94; 181-96 to 181-110; 181-112; 181-113;
- "(e) Sections 181-121 to 181-139;
- "(f) Sections 181-141 to 181-150;
- "(g) Sections 181-161 to 181-167;
- "(h) Sections 181-251 to 181-253; 181-257; 181-260 to 181-264;
- "(i) Sections 181-271 to 181-302;
- "(j) Sections 181-311 to 181-316;
- "(k) Sections 181-341 to 181-352;
- "(l) Sections 181-361 to 181-407;
- "(m) Sections 181-421 to 181-427; 181-430; 181-442 to 181-445;
- "(n) Sections 181-641 to 181-646; and
- "(o) Sections 181-651 to 181-686;

"Sec. 181-760. Particular provisions prevail. If any provision of part I of the Hawaii insurance law, as incorporated in this part II by section 181-759, shall be in conflict with any provision contained in sections 181-730 to 181-758, the provision contained in sections 181-730 to 181-758 shall prevail."

SECTION 4. This Act shall take effect upon its approval.
(Approved July 12, 1965.) S.B. 951.